COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

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December 8, 2003

DOCUMENT FOLDER

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon Pennsylvania, Inc.
Docket No. C-20027195

Dear Secretary McNulty: PUBLIC VERSION

Enclosed please find the original and nine (9) copies of the Exceptions on behalf of the Office of Small Business Advocate. I am providing both a **Proprietary Version** and Non-Proprietary Version. As evidenced by the enclosed certificate of service, a copy has been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

Enclosures
cc: Cheryl Walker Davis, Director
Office of Special Assistants

Hon. Cynthia Williams Fordham
Administrative Law Judge

Parties of Record

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
v.	:	Docket No. C-20027195
Verizon North Inc.	:	

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Exceptions on behalf of the Office of Small Business Advocate in the manner indicated upon the persons addressed below:

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Assistant Small Business Advocate

Date: December 8, 2003

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.	:	
V.	:	DOCKET NO. C-20027195
VERIZON NORTH, INC.	:	

EXCEPTIONS ON BEHALF OF THE OFFICE OF SMALL BUSINESS ADVOCATE

NON-PROPRIETARY VERSION

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Dated: December 8, 2003

TABLE OF CONTENTS

I. INTRODUCTION

On December 30, 2002, Verizon Pennsylvania, Inc. ("VZ-PA") and Verizon North, Inc.("VZN") (collectively "VZ" or "Petitioner") filed a Joint Petition ("VZ Petition") regarding the further reduction of their access charges pursuant to the Bell Atlantic-Pa.-GTE Merger Order[1], the Global Order[2] and the generic access charge investigation at Docket No. M-00021596. This VZ Petition was published January 18, 2003, at 33 Pa.B. 502. Comments were filed by several parties including the Office of Small Business Advocate ("OSBA"); the Office of Consumer Advocate ("OCA"); AT&T Communications of Pennsylvania, Inc. ("AT&T"); Sprint Communications Co. & United Telephone Co. of Pa. ("Sprint"); the Rural Telephone Company Coalition ("RTCC"); and Qwest Communications Corp. ("Qwest").

Among other things, the Global Order directed incumbent local exchange carriers ("ILECs") operating in Pennsylvania to reduce access charges. The Global Order also directed an investigation to be initiated by January 2001 to determine primarily how the carrier charge ("CC") could be reduced.

The access charge investigation was delayed because of VZ-PA's Section 271 hearings in 2001. The Pennsylvania Public Utility Commission ("Commission" or "PUC") opened a docket at M-00021596 in January 2002 to accommodate the access charge investigation required by its Global Order.

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[1] Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket Nos. A-310200F0002, A-311350F0002 and A-310222F0002 (entered November 4, 1999) ("Merger Order").

[2] Re Nextlink Pennsylvania, Inc., et al., Docket No. P-00991648; P-00991649, 93 PaPUC 172 (entered September 30, 1999) ("Global Order"); 196 P.U.R. 4th 172, *aff'd sub nom.* Bell Atlantic-Pennsylvania, Inc. v. Pa. P.U.C., 763 A.2d 440 (Pa. Cmwlth. 2000), *alloc. granted.*

On March 21, 2002, AT&T filed a Formal Complaint docketed at C-20027195 against VZN to have its access charges reduced to VZ-PA's levels as required in the Merger Order at A-310200F0002. The Complaint, although initially dismissed by Chief Administrative Law Judge Christianson, was reinstated by the Commission by Order entered December 24, 2002. This Order also bifurcated matters concerning access charges such that VZ's access charges were under Docket No. C-20027195 proceeding while the RTCC and Sprint access charge settlement maintained another docket.

The VZ Petition proposed access charge reductions similar in methodology to those presented by RTCC/Sprint in their settlement proposal. OSBA, OCA, AT&T, Qwest, the Office of Trial Staff ("OTS") and MCI WorldCom Network Service, Inc. ("MCI") objected to the VZ Petition. In its May 5, 2003, Order, the Commission referred the VZ Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision.

The active participants in this proceeding are VZ, AT&T, OCA, OSBA, OTS, MCI and Qwest. VZ-PA served its initial Petition and testimony, and all other active parties filed some form of responsive testimony. Hearings were held before Administrative Law Judge Cynthia Williams Fordham ("ALJ") on August 25 and 26, 2003. In accordance with Order #4, Main Briefs were filed on September 18, 2003, and Reply Briefs were filed on September 29, 2003.

On November 18, 2003, the Recommend Decision ("R.D.") of the ALJ was issued regarding reduction of access charges in VZ's service territory. The ALJ cited the sentiments of the parties in Main or Reply Briefs to the effect that six (6) out of the seven (7) active parties either support or do not oppose a settlement proposal of VZ and OCA as a first step to reduce access charges. The ALJ's Recommended Decision approves the VZ/OCA joint proposal as a reasonable compromise.

The Commission established that Exceptions to the Recommended Decision are due December 8, 2003. These Exceptions are submitted by the OSBA in accordance with the Commission's schedule for review.

II. SUMMARY

The OSBA is focused on the solution of reducing access charges as the process affects small business customers. While the OSBA recognizes that the ALJ's recommendation is a proposed agreement among the majority of the parties to this case, its implementation as proposed would be unfair and unlawful. To implement the recommendation would also be contrary to the public interest because it would undermine competition.

The OSBA accepts the summaries contained in the Recommended Decision as accurate and complete. The OSBA excepts to the result reached by the recommendation as unsupported and unlawful—specifically for small business customers. Attributing the **proper** rate increase to the small business end-user to offset the reduction of access charges would pave the way for a competitive marketplace that would benefit both the end-use consumers and the telecommunications industry carriers. However, the implementation of the Recommended Decision would yield rates that can not be supported as a **proper** increase to the small business end-user and would penalize those small business end-users that are patronizing VZ's competitors.

The OSBA does not intend to repeat the arguments made in its Main or Reply Briefs. The OSBA does, however, incorporate herein those arguments and references contained in its Main and Reply Briefs.

The OSBA finds no substantial record evidence cited by the ALJ in the Recommended Decision that supports the VZ/OCA proposal to increase local exchange service rates for small

business customers to balance a reduction of access charges. Consequently, the OSBA opposes the Recommended Decision as not in the interest of a segment of the public interest—specifically, small business customers.

First, the record reveals that the VZ/OCA proposal is a cross-subsidy. The result of the VZ/OCA proposal reduces the **VZN** access charges to the levels of the VZ-PA access charges. Nevertheless, the customers of the **VZ-PA** service territory are paying for this result through an increase in local exchange service rates. While the OSBA recognizes that the Commission directed VZN and VZ-PA to achieve parity in access charges, there is no PUC directive for how parity is to be achieved. The VZ/OCA proposal does not specify whether the increase in local exchange rates will be borne equally by VZN business customers and VZ-PA business customers or whether the burden will be borne asymmetrically with VZ-PA business customers carrying a larger increase than the VZN customers. Because this critical matter is indeterminate, the proposal can not be declared to be in the public interest.

Second, the VZ/OCA proposal shifts costs between VZ's non-contracting business customers and VZ's contracting business customers. VZ's contracting business customers have a bundled or packaged service with VZ. For example, a VZ contracting business customer may have local exchange, long distance, and Internet service from VZ as a package. In contrast, a non-contracting business customer may have local exchange service with VZ but long distance with a competitor of VZ and Internet service with a non-VZ entity. VZ has stated that its contracting business customers have locked into rates which cannot be changed. Consequently, the VZ/OCA proposal exempts VZ's contracting business customers from the rate increase to local exchange service to offset the reduction to access charges.

There is no justification for forcing VZ's non-contracting business customers to bear that portion of the rate increase caused by a reduction in access charges for VZ's contracting business customers. VZ could set up a deferral account equal to the revenue requirement caused by the reduction in access charges to VZ's contracting business customers. VZ could then collect that deferred amount as the contracting business customers enter new contracts. However, even if competition were to prevent VZ from recovering the entire deferred amount, there is nothing in the record to support making that undercollection the responsibility of VZ's non-contracting business customers.

Third, it is not equitable for the non-contracting business customers to bear the full burden of the increase to local exchange service rates just because they do not have contracts with VZ. Some of these customers, while not choosing to contract with VZ, have chosen to contract with a non-VZ service provider for some telecommunications service other than local exchange service. VZ's bundled or packaged services may not be attractive to these non-VZ contracting customers because they receive some segment of the packaged service from a competitor of VZ by contract. In essence, these customers are being penalized simply because they exercised their rights under competition, but chose to subscribe to a non-VZ entity for some of their telecommunications services. Such a result would hinder competition.

III. EXCEPTIONS

A. The ALJ's Recommendation Is Not Supported By Substantial Evidence.

(R.D. at 12-16, 58-59; OSBA M.B. at 9-15)

The Commission stated in the Global Order,

> We believe that the sooner that we resolve the reduction and possible elimination of the carrier pool, the better it would be for the competitive environment in Pennsylvania. Therefore, we shall initiate an investigation about January 2, 2001, to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced. At its conclusion, but no later than December 31, 2001, the pool will be reduced.[3]

The Commission also stated that parity between the VZN and VZ-PA companies is to be achieved through the Commission initiated investigation of access charges. [4] These are the Commission directed goals of this proceeding.

The ALJ states that the two goals above referenced are achieved through the VZ/OCA proposed settlement – those goals being: (1) parity achieved between the companies of VZ (VZN and VZ-PA) in access charges, and (2) reduction of access rates on a revenue neutral basis.[5] The ALJ goes further to say that the proposal is reasonable regardless of the **valid** OSBA concern that the record has little information on the amount of the proposed increase in business rates. The ALJ's rationale for finding the proposal reasonable, even after acknowledging that the OSBA concerns are valid, is that "the record contains information about the total amount to be transferred to the

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[3] Docket No. P-00991648; P-00991649 at 60, 93 PaPUC 172 (entered September 30, 1999).

[4] Merger Order at 57.

[5] R.D. at 58.

residential and business[6] customers and the maximum amount that will be borne by the residential customer."[7]

The OSBA respectfully disagrees.

Conspicuously missing in the ALJ's rationale to support the VZ/OCA proposal is the acknowledgment of the maximum amount to be borne by business customers. The VZ/OCA proposal reads,

> The total access reduction under this scenario would be **[BEGIN PROPRIETARY]**_____**[END PROPRIETARY]**.... **No more than** $40 million would come from Residential basic local service rate increases on a combined [VZ-PA] and [VZN] basis, and such increases would be less than $1.00 per residential line..."[8]

Nothing in that language would prevent VZ from implementing an increase of only $30 million for residential customers while non-contracting business customers receive an increase of $25.6 million. An indeterminate increase that is not agreed to by the representative of the party affected by that increase cannot be in the public interest.

Furthermore, the record shows that some business customers in VZ-PA's service territory could receive a rate increase for local exchange service of approximately $2.00 per month, even though the weighted average increase for business customers throughout the VZ service territory would be less than $1.00.[9] MCI stated that VZ's monthly service revenues are already above cost and a proposed monthly increase near $2.00 for residential customers would increase revenues far

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[6] Business customers contracting for telecommunications services with VZN or VZ-PA are exempt from any proposed increases from these proceedings. See R.D. at 16, note 19, citing Tr. at 145 l. 12 - 147 l. 8.

[7] R.D. at 58-59.

[8] Id, Attachment A, DMB Exhibit 1 (Emphasis added.).

[9] For example, non-contracting business customers in density cell 1 could experience an increase at $1.87, density cell 2 at $1.80, density cell 3 at $0.80 and density cell 4 at $0.60. See also, R.D. at 54.

above the cost of local exchange service. The same would be true of an increase of almost $2.00 per month for business customers.[10]

Additionally, VZ made statements that its proposed basic service rates in the VZ/OCA proposal are lower than those rates in the RTCC/Sprint settlement. It was noted, however, that VZ was unable to provide a comparison of the RTCC/Sprint rates versus the VZ proposed rates because no rates were proposed by VZ.[11] VZ left the rates unknown for business customers. An indeterminate rate after the conclusion of a rate investigation initiated by the Commission cannot be declared just and reasonable.[12]

The OSBA concedes that the record states, "[T]he increase to **weighted average** business rates would ... be less than $1."[13] However, the OSBA views this statement as misleading.

The weighted average is based on the rates for **all** business customers, including those customers that have contracted business local exchange service. These contracts prevail for rates, terms and conditions, over an agreed upon period. By their terms, the contracted services would not be affected by any outcome of this proceeding. However, the weighted average of business customers would include those customers that are served under contract. Since these contract customers have not been included in the proposed increase, there are fewer business customers to share in the allocation of the offset dollar amount above $40 million in the VZ/OCA proposal.

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[10] See, MCI Stmt. 1.0 at 26 l. 3 - 13. The OSBA requests the PUC to take official notice that business customers' local exchange service rates are more for the same local exchange service that residential customers receive. It would seem logical that MCI would reach the same conclusion for business customers experiencing an estimated $2.00 monthly increase in local exchange service to offset the reduction of access charges.

[11] R.D. at 52.

[12] See 66 Pa. C.S. §§ 1301, 1309(a).

[13] R.D. at 8 (Emphasis added.).

Simple mathematics requires that the increase per non-contract business customer would grow the more the subset of contracting business customers grows.

The terms or conditions revealing the true effect of the offset for business customers who are not contracting for local exchange service are essential to this proceeding. This information, however, is not found in the record. For this reason, the statement made by VZ ("the required increase to business rates is also projected to be less than $1.00 to the weighted average") under the VZ/OCA joint proposal, while not false, is deceptive.[14]

There exists no record evidence to state the maximum amount a particular non-contracting business customer will bear for increase in local exchange service; nor is there record evidence stating the maximum total amount that the non-contracting business customers will bear as a customer class. The ALJ references the OSBA arguments that the sponsoring witness for the VZ/OCA and VZ proposals provided no specificity regarding the effect on the business customer class.[15]

In addition to the uncertainty or non-specifics of the rate increase to the non-contracting business customer class, and thus the vulnerability of that class thereto, the ALJ made no finding that states that the $40 million cap on residential services is supported by the record. The $40 million cap appears only as part of the VZ/OCA proposed settlement. The $40 million figure was not found reasonable in and of itself. Moreover, the Recommended Decision is devoid of any finding of fact

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[14] VZ M.B. at 18.

[15] R.D. at 14-16.

that the VZ/OCA Settlement in its entirety is just and reasonable except for the finding that "six out of seven parties ... agree with portions of the proposal."[16]

B. The Operation of the ALJ's Recommendation Produces Discrimination. (R.D. at 8 and Attachment A)

There is nothing in the record, or in the direction provided by the PUC to reduce access charges, to prohibit the contracting business customers from bearing the offset to the reduction of access charges. Under the VZ/OCA proposal, VZ-contracting business customers will not realize increases to their local exchange service rates. Yet, these same VZ-contracting business customers will receive the benefit of reduced access charges if the interexchange carriers choose to pass reductions to their end-use customers.

The non-contracting business customer class[17] has no notice or specificity of the amount of increase to which it is vulnerable. The opposite is the case for both the VZ-contracting business customers (no vulnerability to an increase), the packaged service residential customer (no vulnerability to an increase) and the non-packaged service residential customer (vulnerability not to exceed $1.00 increase per month).[18] Moreover, neither the record nor the Recommended Decision provides justification for the discriminatory treatment in vulnerability; therefore, this discriminatory treatment violates the PUC statute.[19]

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[16] R.D. at 58.

[17] A non-contracting business customer may have local exchange service with VZ but long distance with a competitor of VZ and Internet service with a non-VZ entity in a contract. Thus, a non-VZ contracting business customer is only a non-contracting business customer from VZ's perspective.

[18] The inequitable treatment of the packaged service residential customer vs. the non-packaged service residential customer was agreed to by the OCA as one of the sponsoring parties to the VZ/OCA proposal.

[19] See 66 Pa. C.S. § 3009(b)(2).

The OSBA understands that VZ and its contracting customers have entered binding agreements regarding, among other things, local exchange service. Equity dictates that these customers have some mechanism to afford the chance of their bearing some of the burden to offset the access reduction so that the non-contracting business customers do not bear that burden in its entirety.[20] For example, a reasonable allocation attributable to the VZ contracting business customers for offsetting reduced access charges could be deferred and ultimately assessed once these customers have completed their current contract periods and enter new contracts. Furthermore, even if VZ were forced to waive collection from some or all of these VZ contracting business customers as a cost of doing business in a competitive environment, there is no justification for assigning that allocation to VZ's non-contracting business customers.

Additionally, the non-VZ contracting business customer will receive an increase in local exchange service while the VZ-contracting business customer will not. It is possible that the non-VZ contracting business customer may have a contract for services other than local exchange service with a VZ competitor. This non-VZ contracting business customer may be economically or contractually prohibited from contracting with VZ because the competitor offers a better price or value for those non-local exchange services, or the penalties to break the contract with the VZ competitor outweigh the benefits of becoming a VZ-contracting business customer. It would be unfair and anti-competitive to require non-VZ contracting business customers to pay more for local

[20] See 66 Pa. C.S. § 3009(b)(2) (Commission to ensure that local exchange telecommunications companies do not make or impose unjust preferences, discriminations or classifications for protected telephone service.)

exchange service than VZ-contracting businesses simply because the former exercised a choice of a non-VZ provider for other than local exchange service.[21]

C. Approval of the VZ/OCA Proposal as a Partial Settlement is Improper. (R.D. at 58-59; OSBA R.B. at 6)

Although the VZ/OCA proposal has been called a joint settlement, it is not. In this proceeding, by the Commission's own definition, the posture falls short of the bar of a non-unanimous settlement. In a light most favorable to VZ, this proceeding is litigation where a partial stipulation is recommended to the Commission.[22] The Commission must decide this case based on the findings of fact supported by substantial evidence. The findings of fact supported by substantial evidence regarding the non-contracting business customers affected by the VZ/OCA proposal are slim to none.

Furthermore, in ARIPPA v. Pa. P.U.C. et al., the Commonwealth Court addressed the issue of non-unanimous settlements.[23] While the Commonwealth Court did not decide the issue of non-unanimous settlements, its dicta expresses disdain toward such a procedure. The Commission should be mindful of ARIPPA in making its decision for this proceeding.

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[21] See 66 Pa. C.S. § 3007(3)(Upon the commission's evaluation of revenue-neutral tariff changes proposed by local exchange carriers, no rate change shall be approved if it constitutes or promotes unfair competition.)

[22] See R.D. at 53 (The VZ/OCA joint proposal does not fit the PUC's definition of partial settlement).

[23] 792 A.2d 636 (Pa. Cmwlth. Feb. 2002)(The court points out that there is a tendency to place some parties at a severe disadvantage regarding a non-unanimous settlement with the burden of proof shifting to the non-consenting parties to prove the unreasonableness of the settlement.)

D. The VZ/OCA Proposal Does Not Comply With Commission Statute or Precedent.

(R.D at 26; OSBA M.B. at12-15.)

Section 1325 (a) of the Public Utility Code states that local exchange service rates cannot be increased by an amount that exceeds the overall percentage increase of intrastate revenues unless it is proven that an increase in local exchange service rates is justified based on the cost of providing that service.[24] The proposal by VZ/OCA offers no cost studies other than the one that allocates 100% of the local loop cost to the end-users of local exchange service. The result of adopting the VZ/OCA proposal is to approve an increase of local exchange service while the overall increase to intrastate revenues is zero. This result is prohibited by Section 1325(a) of the Public Utility Code.

The Recommended Decision summarizes the arguments of the OCA and the OSBA suggesting that Commission precedent requires compliance with Section 1325 of the Public Utility Code resolving the access charges allocation issue of this proceeding.[25] Contained in the summary are the following points:

> (1) Section 1325 is applicable to this case;
> (2) Section 1325 requires VZ to make certain cost allocations in support of its request to increase local service rates;
> (3) VZ made no attempt to determine the appropriate cost allocations in compliance with Section 1325;
> (4) The proper approach for allocation is to treat the local facility as a joint and common cost of all services that use that facility, i.e. to allocate the total cost of the local loop facility across all services that use the local loop facility;

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[24] 66 Pa. C.S. § 1325(a).

[25] 66 Pa. C.S. § 1325 and R.D. 25-30.

(5) VZ's cost study has allocated 100% of its local loop facility costs to local exchange service for the purpose of preparing cost studies for this case.[26]

In recommending the VZ/OCA proposal, the ALJ provides no finding of fact that the cost studies submitted by VZ in this record are other than a 100% allocation of the local loop facility. Moreover, there is no conclusion of law that the VZ/OCA proposal complies with Section 1325. Even one of the proponents of the proposal argued that the cost studies in this record are flawed under Section 1325.[27] Also, as stated earlier, MCI contends that VZ local exchange service rates are already above costs.[28]

The proposal cannot be found just and reasonable if the underlying cost studies supporting the proposal are flawed and unlawful. The Commission cannot endorse a proposal where the underlying cost studies for the proposal do not comply with either Commission statute or Commission precedent.

VZ has not justified the proposed increase based on the cost to provide the service. VZ did not submit the stand-alone cost of providing the dial-tone line service.[29] Consequently, the amount of the local exchange service rate increase cannot exceed the overall percentage increase of intrastate revenue—or zero percent.

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[26] R.D. at 26-30 citing Pennsylvania Public Utility Commission et al v. Bell Atlantic - Pennsylvania, Inc., Docket No. R-00963550, Opinion and Order at 23-24 (December 16, 1996).

[27] See OCA M.B. at 23-28. OCA also contends that even VZ notes that section 1325 applies in this proceeding and by implication acknowleges that cost studies in compliance with section 1325 are necessary.

[28] See supra at 8, note 10.

[29] OCA Stmt. No. 1.0 at 23 stand-alone cost for each class of service using dial tone unavailable. See also Tr. at 198-99 where VZ witness states it has not done analysis of whether residential and business retail revenues cover the cost of providing the respective dial tone line services.

The VZ/OCA Proposal of **[BEGIN VZ PROPRIETARY]** ____ **[END VZ PROPRIETARY]**CC requires a significant increase in local exchange service rates. This proposed allocation violates Section 1325 of the Public Utility Code.[30]

Moreover, it is not reasonable for VZ to shift cost responsibility for access charges to two customer classes, residential and business dial tone line customers, without providing justification. Access lines are part of the integrated telephone network; they are not subscriber facilities in terms of cost responsibility and the local loop is a variable long-run cost. The shift to local exchange ratepayers is not supported by marginal cost pricing principles.[31] Local telephone utilities have an incentive to overstate the access line costs that could be recovered from captive local exchange customers.

The loop is an element of current telephone communication services that is being continually improved and changed. At some point, new technology may replace the loop facilities as we know them today. Today, the local loop is essential for local calls, toll calls (both intrastate and interstate), DSL (digital subscriber line), to name a few services.[32] When a loop carries both voice and data, it must withstand tolerances and quality standards much higher than required for just voice grade services alone. This distinction in local exchange services should be acknowledged in the allocation of the loop. For example, one local exchange company has recommended a 50/50 allocation of the local loop regarding local exchange service and DSL.[33] This recommendation by a local exchange

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[30] The same comments go to the VZ/OCA Settlement Proposal although the OCA, by inference of a settlement, has agreed to allow the violation in exchange for other negotiated terms, such as the time period the agreement stays in place.

[31] Revised OSBA Stmt. No. 1 at 10 - 11.

[32] Tr. at 455 - 56.

[33] Tr. at 459 - 60.

carrier ("LEC") suggests that not all LECs solicit 100% of the loop costs to be borne by the captive end-user of local exchange service

E. Commission Approval of the RTCC/Sprint Settlement Cannot Be Used as Precedent.

(R.D at 51; OSBA R.B. at 8-9)

The Recommended Decision notes that VZ has compared the terms of the VZ/OCA proposal to the Commission approved RTCC/Sprint settlement, alleging that the VZ/OCA proposal is comparable in terms and should achieve a comparable approval.[34] The OSBA has responded to this allegation and does not repeat those arguments here.[35]

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[34] R.D. at 51.

[35] See R.D. at 51-52 (RTCC/Sprint was a **settlement,** not a stipulation agreed to or unopposed by the majority of the active parties.).

IV. CONCLUSION

For the reasons cited herein, the Office of Small Business Advocate respectfully requests that the Commission reject the Recommended Decision of Administrative Law Judge Fordham and remand for an evidentiary proceeding regarding the issues contained herein.

Respectfully submitted,

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Dated: December 8, 2003

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December 8, 2003

VIA UPS OVERNIGHT DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17102

RECEIVED
DEC 0 8 2003
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195

PUBLIC VERSION

Dear Secretary McNulty:

Enclosed please find an original and nine (9) copies each of the Proprietary and Non-Proprietary Exceptions on behalf of Qwest Communications Corporation. Copies of the exceptions have been served in accordance with the attached Certificate of Service.

Very truly yours,

John F. Povilaitis

DOCUMENT FOLDER

Enclosures
JFP/cc

c: Certificate of Service
The Honorable Cynthia W. Fordham

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger	: : : :	Docket No. C-20027195
AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.	: :	

EXCEPTIONS OF QWEST COMMUNICATIONS CORPORATION

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Dated: December 8, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger	:	Docket No. C-20027195
AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.	:	

EXCEPTIONS OF QWEST COMMUNICATIONS CORPORATION

I. INTRODUCTION

Qwest Communications Corporation ("Qwest") submits to the Pennsylvania Public Utility Commission ("Commission") its Exceptions to the Recommended Decision of Administrative Law Judge Cynthia Williams Fordham, issued on November 18, 2003. Qwest applauds ALJ Fordham for properly finding that the intrastate access charges of Verizon Pennsylvania Inc. ("Verizon-PA") and Verizon North, Inc. ("Verizon-North")(collectively "Verizon") must be reduced in a revenue-neutral manner. However, Qwest files these Exceptions to point out various discrepancies in the Recommended Decision. In particular, the Recommended Decision fails to recognize that the record supports not only establishing a schedule for the further reductions after the initial settlement reduction is achieved, but also bringing Verizon's intrastate access charges to parity with its interstate access rates.

II. SUMMARY OF EXCEPTIONS

The Recommended Decision correctly initiates reductions in Verizon's intrastate access

charges a revenue-neutral manner. The record clearly supports the reduction of intrastate access rates while at the same time shifting support for local services to end-users to create an economically sound and competitively-neutral rate structure.[1] Such restructuring will begin to encourage competition in the market for telecommunications services to the benefit of all Pennsylvania consumers.[2]

In fact, the Commission has recently reiterated its intentions "to reduce implicit subsidy charges such as access charges that impede competition in the telecommunications market."[3] The Commission went on to explain that "[a]s implicit charges become explicit charges, competitors are better able to compete for local and long distance customers in an ILEC's service territory because IXCs are not hindered by paying ILECs excessive access charges in providing competitive toll services and CLECs are better able to compete with ILEC local service rates that have been kept artificially low as a result of the access charge subsidies."[4] Removing the implicit subsidies in Verizon's access charges requires reducing intrastate access rates to interstate rates on a revenue-neutral and competitively-neutral basis, as well as eliminating the Carrier Charge ("CC").

What the record demonstrates, but the Recommended Decision fails to recognize, is that Pennsylvania consumers will never truly enjoy vigorous local or long distance competition until the implicit subsidies in Verizon's intrastate access charges are made explicit through reducing the charges to parity with interstate rates. Disregarding the complete record in the

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[1] Qwest Main Brief at 17-19 *citing* Qwest St. No. 1.0, pp. 10-13; AT&T St. No. 1.1, p. 25; Tr. 116-119; Verizon St. No. 3.0, pp. 3-11.

[2] Qwest Main Brief at 18 *citing* AT&T St. No. 2.0, pp. 1-12, 33; Verizon St. No. 2.0, p. 20-24; Verizon St. No. 3.0, p. 3; Tr. 116-117, 173-174.

[3] *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991648; P-00991649, 93 PaPUC 172 at 10 (1999) ("Global Order"); 196 P.U.R. 4th 172, *aff'd sub* nom. *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440 (Pa.Cmwlth. 2000), *alloc. granted.*

Recommended Decision creates reversible error. Accordingly, Qwest implores the Commission to realize the removal of the implicit subsidies by establishing a specific timeframe for reducing Verizon's intrastate access charges to interstate rates.

EXCEPTION NO. 1: THE RECOMMENDED DECISION MISCONTRUES THE RECORD AS AN EXCUSE TO PROLONG THE IMPLICIT SUBSIDIES IN VERIZON'S INTRASTATE ACCESS CHARGES IN PENNSYLVANIA.

The Recommended Decision indefinitely defers any real reductions in Verizon's intrastate access rates based solely on its selective reading of the record in this proceeding. The Recommended Decision lacks any conclusions that the immediate reductions are not necessary or are not worth the benefit to Pennsylvania consumers by creating a more competitively-neutral environment. Conversely, the record requires firm commitment from the Commission to remove the implicit subsidies in Verizon's intrastate access rates, as opposed to another vague reference to the need for reductions.

The vast majority of the Recommended Decision consists of a recapitulation of the various parties' positions. However, it is not clear whether certain portions of the Recommended Decision is restating a party's position, or is drawing an independent conclusion. In fact, beginning on page 46, the Recommended Decision includes disparaging remarks and inaccurate misrepresentations about the positions taken by the IXCs. For example, if the ALJ accepts the conclusion that "[t]he IXCs demonstrate that they will never be satisfied, and the Commission need not cater to their extreme demands", such an opinion would be unsubstantiated and clearly injudicious.[5] Moreover, this statement ignores the significant resources the IXCs expended in

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[4] *Global Order* at 10.

[5] *Recommended Decision* at 46.

this proceeding to delineate the numerous justifications with specific solutions to reduce Verizon's intrastate switched access charges appropriately in a competitively-neutral manner.

To summarize, Qwest explained that providing intrastate long distance service over the local loop requires no additional functionality and generates no additional cost to the local carrier than any other service carried over the local loop.[6] While the loop carries all of these "other services", no entity using the local loop other than the IXCs pay the exorbitant access charges, including providers of wireless, DSL or IP-based telephony services.[7] In addition, access services for intrastate telecommunications are identical with access services provided for interstate telecommunications, though Verizon's intrastate access rates are significantly higher than Verizon's interstate access rates.[8] It is not competitively-neutral to depend predominantly on intrastate toll services to fund the entire universal service needs of basic customers in the Verizon territory.

The Recommended Decision also illogically decides that it is premature to reduce Verizon's intrastate access charges by removing implicit subsidies, because the IXCs have not already figured out how toll pricing would be modified.[9] Specifically, the Recommended Decision stated that:

> AT&T's witnesses have essentially stated that the intention to price toll (including its connection fee) based on what the market will bear, and have refused to commit to lowering the $1.95 charge even if (sic) Verizon lowers its access charges and even based on the prospect of lower access costs from the rural ILECs with implementation of the RTCC settlement. Therefore, AT&T's own admissions show that there is no urgency to lowering Verizon's access rates beyond what is proposed in the Verizon/OCA Joint Proposal.[10]

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[6] Qwest Main Brief at 10 *citing* Qwest St. No. 1.0, p. 17; Verizon St. No. 3.0, pp. 3-11; MCI St. No. 1.0, pp. 38-39.

[7] Qwest Main Brief at 10 *citing* OCA St. No. 1.0, p. 48; OSBA St. No. 1.0, p. 9; OTS St. No. 1.0, p. 6; AT&T St. No. 1.0, pp. 12, 18-19; Tr. 234, 278-279, 406, 423.

[8] Qwest Main Brief at 10 *citing* Tr. at 278-279, 423.

[9] *Recommended Decision* at 45.

[10] *Id.*

This conclusion ignores the extensive portion of the record spent on AT&T, MCI and Qwest pointing out how the pricing for long distance services are developed, and why it is premature to know specifically what the impact of any future reductions, if ordered, might be on long distance pricing.

As a result of market pressures, IXCs have developed nationwide pricing plans, which attempt to recover the costs of intrastate and interstate switched access charges, along with various other costs associated with providing long distance services.[11] More importantly, perhaps, is that the switched access charges vary not only from state to state, but also from LEC to LEC. The access rates of *all* LECs in whose territories the IXC offers service must be taken into account, along with various other charges and fees, in determining what the retail toll rate will be.[12] This task must also take into account many variables, including the number of customers nationwide, the calling patterns of those customers.[13]

Determining the proper charges for long distance services becomes infinitely more difficult when attempting to develop and maintain plans and packages to remain competitive in the IXC marketplace.[14] The various charges associated with developing the various plans sold to various types of customers across the country makes monitoring, much less predicting, any change to those rates practically impossible and administratively a nightmare.[15] Hesitation to make such premature predictions, therefore, is not "an admission" by AT&T that intrastate

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[11] Qwest Reply Brief at 9-10 *citing* Tr. 270-271, 326-328; *see also* Qwest St. No. 1.0, p. 15.

[12] Qwest Reply Brief at 9-10 *citing* Verizon Main Brief at 42-43; *see also* Tr. 271-272, 274, 322, 326-327.

[13] Qwest Reply Brief at 10.

[14] *Id.*

[15] *Id.*

access charges reductions are not promptly needed.[16] Selectively reading AT&T's position, clearly articulated and consistently reiterated, cannot justify continuing to prolong removing the implicit subsidies in Verizon's intrastate access charges with reductions to the level of interstate rates.

Deferring consideration of the appropriate reduction of Verizon's intrastate switched access charges to a future proceeding needlessly postpones the substantial benefits of such reductions to Pennsylvania consumers. The **Begin Proprietary *** End Proprietary** reduction in access charges contemplated in the OCA/Verizon alternative settlement simply falls short in terms of adequate movement toward interstate access charges. An appropriate reduction of access charges calls for total access charge reductions of **Begin Proprietary *** End Proprietary** until parity with interstate rates is achieved.[17] Spreading cost responsibility for a reduction in intrastate access charges to interstate levels—only to local customers not purchasing packages—would therefore result in no more than a total of **Begin Proprietary *** End Proprietary** increase per line on a revenue neutral basis, which is reasonable.[18]

Alternatively, postponing the access charge restructuring will only expose Pennsylvania consumers to a more significant rate increase at a subsequent time. As explained in Qwest's Brief, the FCC appears to be moving in a direction that continues to significantly reduce interstate switched access rates.[19] If the federal interstate rates continue to decrease, waiting two more years to reduce intrastate rates appropriately can only result in a significantly greater rate

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[16] *Recommended Decision* at 45

[17] Qwest Main Brief at 5 *citing* Qwest St. No. 1.0, p. 6-7; AT&T St. No. 1.0, pp. 8, 26, 33; Tr. 380, 384-385.

[18] Qwest Main Brief at 10 *citing* AT&T Cross Exh. 7.

[19] Qwest Main Brief at 19-23.

impact on Pennsylvania consumers, not to mention the detrimental impact on competing IXCs. [20] Likewise, finding that "the Commission should review the impact of the current reductions and reduce costs in subsequent proceedings if necessary" is insufficient to address the need to remove the implicit subsidies in Verizon's intrastate access charges through reductions to the level of its interstate access rates.[21]

EXCEPTION NO. 2: THE COMMISSION MUST COMMIT TO INTRASTATE ACCESS CHARGE REDUCTIONS THAT ACHEIVE PARITY WITH INTERSTATE RATES ON A REVENUE-NEUTRAL AND COMPETITIVELY-NEUTRAL BASIS.

The Recommended Decision also misconstrues key points in the record to dismiss the need to reduce intrastate access charges to the level of interstate rates.[22] When properly reviewed in its entirety, the record clearly supports reducing Verizon's intrastate access charges to the level of its interstate rates. Despite the mischaracterization of Qwest's advocacy in the Recommended Decision,[23] there is no question that Qwest has consistently advocated that intrastate access rates should mirror interstate rates in a manner that is revenue-neutral and competitively-neutral.

Indeed, Qwest explained in its Main Brief that the timing is right for the Commission to close the jurisdictional gap between interstate switched access rates and the intrastate switched access rates, which incumbent and competitive local exchange carriers charge in Pennsylvania, especially with the FCC's restructure of interstate switched access rates through implementation of its *CALLS* and *MAG Orders*.[24] If the Commission closes the jurisdictional gap between

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20 Qwest Main Brief at 10.

21 *Recommended Decision* at 59.

22 Qwest Main Brief at 19-23.

23 *Recommended Decision* at 41.

24 Qwest St. No. 1.0, pp. 2, 16; Tr. 111, 234.

interstate switched access rates and switched access rates in Pennsylvania, the Commission will have taken an important step toward a more sensible, pro-competitive intercarrier compensation scheme. Not doing so will only widen the gap between the policies pursued by the state jurisdiction and the FCC as it moves further toward its broader intercarrier compensation goals.

In the record, AT&T explains that the 1996 Telecommunications Act established a nationwide goal to "replac[e] those implicit support mechanisms with explicit, targeted, and competitively neutral universal service support mechanisms."[25] At the federal level, the FCC appears to continue moving in a direction that significantly reduces interstate switched access rates. Accordingly, the FCC has directly addressed removing any implicit support for local service out of access rates at the interstate level.

State commissions should stay consistent with FCC policies and direction and reduce intrastate switched access rates in the same manner as the FCC. At the hearing, an AT&T witness, Mr. Nurse, acknowledged that:

> The sea change . . . was the passage of the Telecommunications Act, which fundamentally changed the landscape, that fundamentally changed the national policy of protected monopoly LECs having implicit subsidies and achieving universal service through intra-company subsidies and from access subsidies to local, expressly changed and explicitly required support to be implicit.
>
> Judge Schnierle recognized that. Society made a change in the passage of the Telecommunications Act and moved to a competitive local market and that there were certain changes that would be necessary in access and local pricing to do that.[26]

If intrastate switched access rates are reduced, the opportunity for regulatory driven arbitrage will be diminished, the competitive landscape will be enhanced, and consumer confusion will be reduced.

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[25] AT&T St. No. 1.1, p. 9; *see also* Tr. 307.

[26] Tr. 309.

Switched access is included as part of the FCC's pending intercarrier compensation docket and will continue to receive attention in anticipation of the 2005 expiration of the *CALLS* and *MAG* plans. The FCC is considering a bill-and-keep regime for the exchange of most, if not all, intercarrier traffic, including switched access. When the next generation of FCC rulings on access reform is implemented, Pennsylvania should be in a position to follow that lead and allow competitors to respond with services and pricing that is most beneficial for customers. To the degree that Pennsylvania lags behind this progress, Pennsylvania consumers will lag behind the benefits available from fair and balanced competition. It is important to follow the FCC's lead in revenue-neutral access reform, but not to follow too slowly or Pennsylvania customers will continue to pay for the lag.

The FCC most recently restructured interstate switched access as part of its *CALLS* and *MAG Orders*. In the *CALLS Order*, the FCC instituted an access restructure for price cap ILECs that included a reduction of interstate switched access rates and an increase in the End User Common Line ("EUCL") charge to certain maximums. In fact, the FCC recently approved another increase in the cap for the federal residential EUCL to $6.50 per access line.[27] The result of these FCC actions is to shift recovery of some end user revenues from usage sensitive access charges to flat rated monthly end user line charges, consistent with principles of cost causation. A similar restructure has been adopted for non-price cap ILECs through the *MAG Order*. Restructuring intrastate switched access rates by requiring Verizon to reduce its rates on a revenue-neutral basis is consistent with the FCC's most recent restructuring actions.[28] If this

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[27] *Cost Review Proceeding for Residential and Single- Line Business Subscriber Line Charge (SLC) Caps, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262, 94- 1, Order, FCC 02-161 (June 5, 2002)("*SLC Order*").

[28] Qwest St. No. 1.0, p. 12.

revenue-neutral restructure of intrastate switched access charges is adopted, a significant step toward more rational economic pricing for intercarrier compensation will be accomplished.

Most importantly, in the Commissions recent *Order* of July 15, 2003, approving the Joint Procedural Stipulation of June 5, 2003 filed by the Rural Telephone Company Coalition and other supporting parties, the Commission clearly signaled its preference for proposals, which moved access charges closer to cost and closer to interstate rates.

> We further look to the Federal Communications Commission's ("FCC") recent decisions in the *CALLS* and *MAG* orders for precedence in ordering implicit charges to become explicit, through either an increase in basic local telephone service rates, or through service line charges on customer bills. This enables other carriers to compete due to reduced subsidies. **While the Joint Proposal does not require a rural ILEC or Sprint/United to mirror interstate access charges, the fact that this is a step toward making the charges closer to cost and closer to the interstate access charges will help to avoid arbitrage and will help competition enter the ILECs territories.**[29]

This excerpt from the Commission's *Order* virtually expresses chagrin that the parties did not fully embrace interstate rates in their settlement. This most recent expression of the Commission's policy views on access charges fully supports Qwest's position that the Commission should mirror interstate access charges and thus help avoid arbitrage and promote competition in ILEC territories.

It is clear that the Commission should expressly adopt the policy position that intrastate access rates must be at parity with interstate access rates.[30] Indeed, the Commission has acknowledged that the *CALLS Order* demonstrates an appropriate preference for a coordinated

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[29] *RTCC Settlement Order* at 11.

[30] *See also* Qwest St. No. 1.0, p. 7, 12; AT&T St. No. 1.0, pp. 8, 26; MCI St. No. 1.0, p. 33.

approach to access charges at the state and federal levels.[31] Qwest describes that the FCC has indicated its intentions to continue with the philosophy of moving "the support for local services back to the end user in a way that is consistent with cost causation . . . in its current and future proceedings as the competitive nature of telecommunications continues to evolve."[32] Qwest also explains that "[i]nterstate switched access will continue to decline as the FCC moves closer to a bill and keep regime for all intercarrier compensation."[33] The active consideration by the FCC of the bill-and-keep regime signals an evolution in access charge policy that Pennsylvania should heed. Adopting sound policy that intrastate access rates in Pennsylvania will mirror interstate access charges will guarantee the continued evolution of the Pennsylvania market.

For no apparent reasons, the Recommended Decision states that "it is important to note that the interstate rates which Qwest and AT&T seek to have Verizon mirror are not based on TELRIC or any other cost study and were never intended to be reflective of costs."[34] What is actually important is that the interstate access rates do have a basis in the cost of access though there is no requirement that the interstate or intrastate rates be cost-based. Qwest witness, Scott McIntyre, explained at the hearing how the interstate access rates were developed.[35]

> Q. Now, the FCC does not require cost studies, studies of the cost of providing access or the cost of a dial tone line, in order to set its interstate access rates, does it?
>
> A. Well, not currently, but you have to understand that switched access, which became a standard with divestiture -- there were some switched access rates prior to that, but they weren't called that. But they were established essentially at the time of divestiture. Until '91, they were cost based, they were rate of return based. In '91, then certain carriers, which included the Regional Bell Operating

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31 *Order Initiating Proceeding* at 3; *RTCC Settlement Order* at 6-9.

32 Qwest St. No. 1.0, p. 17.

33 *Id.*, p. 12.

34 *Recommended Decision* at 41.

35 Tr. at 380-382.

Companies and GTE, were put under price cap regulation. Since then, the price cap regulation, which adjusts annually to the various rates, is not cost based, but it started cost based. So there is some legacy there of where they started, however, the annual adjustments do not need to be cost justified at this time for those carriers that are under price cap regulation.

Q. So, basically, they've been going down and there's no longer been any cost justification for the reductions?

A. There is a formula or there are formulas within the FCC rules that dictate how price adjustments are done on an annual basis, and one factor, of which there are many, one factor is productivity, which tends to drive improved productivity, tends to drive prices down, and productivity is, in a sense, a cost factor. So I can't say that costs don't come into it. The FCC has anticipated that there will be cost improvements, and that's part of their price cap philosophy, but there's not a direct cost study and there's not a direct correlation between some cost study and the rate adjustment that's made on an annual basis.

The lowering of interstates access rates was not necessarily meant to reflect cost, but instead was a result of moving implicit subsidies into explicit charges. It is illogical to refrain from removing the same implicit subsidies found in Verizon's intrastate rates, because interstate access rates are not purely cost-based when the current access charges in Pennsylvania are clearly not based—nor is required to be based—on the cost of access.

In indicating its refrain from ordering Verizon to immediately reduce its intrastate rates to interstate levels, the Recommended Decision also references the fact that "Qwest's witness admitted that Qwest itself has not rebalanced its rates in order to reduce intrastate rates to mirror interstate in all of the states where it operates as an ILEC."[36] This fact when taken into consideration with Qwest's witness' complete statement, however, does not support the Recommended Decision's insinuation that mirroring Verizon's intrastate access rates with the interstate rates is no currently appropriate. In fact, Qwest's witness, Scott McIntyre, explained that:

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[36] *Recommended Decision* at 47.

A. Where we have the opportunity, we certainly are presenting our case that not only the carrier common line charge but all switched access charges should be restructured to mirror the FCC rate structure and should be lowered on a revenue neutral basis to those rates. So we're making the exact same case in every state where it comes up within our territory that we're making here.[37]

Qwest being unable to date to reach interstate parity of access rates on a revenue-neutral basis does not negate the fact that Verizon should reduce its intrastate access rates to parity with its interstate rates in Pennsylvania where revenue neutrality is possible.

There is no question that the record supports prompt reductions of Verizon's intrastate access charges to the level of its interstate rates. However, at a minimum, the Commission must clarify that the references in the Recommended Decision on these type of reductions to interstate parity do not preclude a finding by the Commission that such reductions are necessary.

[37] Tr. at 384-385.

III. CONCLUSION

Accordingly, Qwest urges the Commission to grant the foregoing Exceptions and take the following steps to ensure that the telecommunications marketplace in Pennsylvania can continue to thrive in the manner in which the Commission has endeavored to create:

a. Restructure Verizon's intrastate switched access rates beyond merely creating parity between the existing rates of Verizon-North and Verizon-PA;

b. Establish a clear timetable in which to phase in the appropriate level of reductions to Verizon's intrastate access rates to achieve parity with interstate access rates in a revenue-neutral and a competitively-neutral manner; and

c. Refrain from imposing additional regulations in a competitive IXC environment that mandate a flow-through of any resulting reductions of intrastate access charges to end user customers.

Respectfully submitted,

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Counsel for Qwest Communications Corporation

Dated: December 8, 2003

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North, Incorporated	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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December 18, 2003

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Re: Complaint of AT&T Communications of Pennsylvania, LLC.
v. Verizon North, Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Mr. McNulty:

AT&T Communications of Pennsylvania, LLC. is not filing reply exceptions in this proceeding. Please contact me if you have any questions.

DOCKETED
DEC 30 2003

Very truly yours,

Robert C. Barber

cc: The Honorable Cynthia W. Fordham
Office of Special Assistants
Service List

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SECRETARY'S BUREAU

161

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Docket No. C-20027195

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ORIGINAL

MCI

December 18, 2003

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Via Overnight Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195

Dear Mr. McNulty:

MCI WorldCom Network Services, Inc. will not be filing Reply Exceptions in the above-referenced matter.

Please contact me if you have any questions or concerns with this filing.

Very truly yours,

Michelle Painter

Michelle Painter

Enclosures

cc: Service List (as noted)

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DEC 30 2003

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SERVICE LIST

I hereby certify that I have this day caused a true copy of MCI's Letter regarding Reply Exceptions to be served upon the parties of record in Docket NoC-20027195 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Washington, DC on December 18, 2003

VIA E-MAIL AND OVERNIGHT DELIVERY

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December 18, 2003

ORIGINAL

VIA HAND DELIVERY

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17102

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195

Dear Secretary McNulty:

Qwest Communications Corporation will not be filing Replies to Exceptions in the above referenced proceeding. Copies of this correspondence have been served in accordance with the attached Certificate of Service.

Please contact me if you have any questions.

DOCUMENT FOLDER

Very truly yours,

John F. Povilaitis

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2003 DEC 18 PM 1:35
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Enclosures
JFP/cc

c: Certificate of Service
The Honorable Cynthia W. Fordham

DOCKETED
DEC 30 2003

RJP

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ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North, Incorporated	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing documents in accordance with the requirements of 52 Pa. Code § 1.54 et seq. (relating to service by a participant).

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IN REPLY PLEASE
REFER TO OUR FILE

December 18, 2003

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
P. O. Box 3265
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ORIGINAL

DOCUMENT
FOLDER

Re: AT&T Communications of Pennsylvania, Inc.
v.
Verizon North, Inc.
Docket No. C-20027195

Dear Secretary McNulty: PUBLIC VERSION

Enclosed for filing please find an original and nine (9) copies of the **Reply Exceptions [Non-Proprietary]** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff

KLM:pae
Enclosure
c: Parties of Record
Chairman Fitzpatrick
Vice Chairman Bloom
Commissioner Thomas
Commissioner Pizzingrilli
Commissioner Holland
Cheryl Walker Davis, Director
Office of Special Assistants

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.	:	
v.	:	DOCKET NO. C-20027195
VERIZON NORTH, INC.	:	

REPLY EXCEPTIONS OF THE OFFICE OF TRIAL STAFF

[NON-PROPRIETARY]

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff
Pennsylvania Public
Utility Commission

P.O. Box 3265
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(717) 787-1976

Dated: December 18, 2003

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CASES:

I. INTRODUCTION

On December 30, 2002, Verizon Pennsylvania Inc. ("VZ-PA") and Verizon North, Inc. ("VZN") (collectively "Verizon") filed a Joint Petition ("Verizon Joint Petition") regarding the further reduction of their access charges pursuant to the Bell Atlantic-Pa-GTE Merger Order[1], the Global Order of 1999[2] and the generic access charge investigation at Docket No. M-00021596. This joint proposal was published January 18, 2003 at 33 Pa. B. 502. Comments were filed by the Office of Trial Staff ("OTS"), the Office of Consumer Advocate ("OCA"), AT&T Communications of Pennsylvania, Inc. ("AT&T"), Sprint Communications Company & United Telephone Company of Pennsylvania ("Sprint/United"), the Rural Telephone Company Coalition ("RTCC"), the Office of Small Business Advocate ("OSBA") and Quest Communications Corporation ("Qwest").

The Global Order reduced access charges of all local incumbent exchange carriers operating in Pennsylvania. The Commission opened a proceeding at Docket No. M-00021596 in January 2002 to accommodate the access charge investigation required by the Global Order in the form of a collaborative proceeding.

On March 21, 2002, AT&T filed a formal complaint against VZN seeking to have VZN's access charges reduced to VZ-PA's levels pursuant to the

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[1] See, *Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002, A-311350F0002 and A-310222F0002 (entered November 4, 1999) ("Merger Order").

[2] See, *Re Nextlink Pennsylvania, Inc.*, Docket No. P-00991649, 93 Pa PUC 172 (entered September 30, 1999) ("Global Order").

requirements in the Commission's Merger Order at Docket No. A-310200F0002. The complaint was docketed at C-20027195. The AT&T complaint, which was initially dismissed by the Chief Administrative Law Judge, was reinstated by a Commission Order entered December 24, 2002. That order also bifurcated the access charge investigation so that all Verizon matters, including the AT&T complaint, would be litigated at Docket No. C-20027195.

Although VZ-PA and VZN agreed to one proposed access charge reduction plan, OTS, Qwest, OCA, OSBA, AT&T and MCI WorldCom ("MCI") have objected to the Joint Petition. By Order entered May 5, 2003, the Commission referred the Verizon Joint Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision. The Commission consolidated the Verizon Joint Petition for Access Charge Reductions with the *AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.* Complaint at Docket No. C-20027195 regarding VZN's access charges pursuant to the Commission Order entered December 24, 2002. The proceeding at the instant docket will also address Verizon's compliance with the Merger Order directive that VZN and VZ-PA have access charges which are at parity with each other.

In accordance with the Commission's order, the matter was assigned to Administrative Law Judge Cynthia Williams Fordham ("ALJ"). A prehearing conference was held May 29, 2003 at which time a litigation schedule was established. Evidentiary hearings were held in Harrisburg August 25-26, 2003.

On September 18, 2003, OTS filed its main brief in this proceeding, setting forth the evidence and law in support of its recommendation that the CC be established at $1.20 for both VZ-PA and VZN and that local residential service rates should not be increased. However, in its reply brief filed September 29, 2003, OTS stated that after further consideration, it would be in the best interest of Verizon's ratepayers for the Commission to adopt a Verizon/OCA Joint Proposal which was discussed by Verizon and the OCA in their main briefs.

The ALJ's Recommended Decision was issued on November 18, 2003. Among other things, the ALJ recommended adoption of the Verizon/OCA Joint Proposal. Exceptions were filed by OSBA, MCI, AT&T and Qwest on December 8, 2003. OTS responds herein to certain of the allegations made in the Exceptions.

II. REPLY EXCEPTIONS

MCI's Exceptions state that the Verizon/OCA Joint Proposal should not be adopted because it does not sufficiently reduce access charges. See MCI Exceptions, p. 6. The Exceptions of AT&T and Qwest state that the Verizon/OCA Joint Proposal should be adopted by the Commission, but only as a first step toward a more comprehensive reduction in access charges. See, AT&T Exceptions, p. 5; Qwest Exceptions, p. 2. In fact, the record in this proceeding demonstrates that the adoption of the Verizon/OCA proposal will achieve parity in the rates between the companies and substantially resolve any existing intrastate access charge concerns. Moreover, the ALJ agreed with OTS that the current record does not support further reductions. In this regard, the ALJ states that any further reductions could be considered by the Commission in a future proceeding. Recommended Decision, p. 59.

AT&T, MCI and Qwest ("IXCs") are only concerned about future reductions so that they can continue to line their pockets with money that rightfully should remain with Pennsylvania ratepayers. The IXCs demand that access rates be based upon cost. However, the record indicates AT&T witnesses have testified AT&T intends to price toll (including its connection fee) based upon what the market will bear and have refused to commit to lowering the $1.95 charge even if Verizon lowers its access charges. Tr. 271-272. In fact, the IXCs are brazen enough to claim that competition will not survive if access charges are not immediately reduced. MCI Exceptions, p. 16; AT&T p. 7. Actually, history

teaches us otherwise. Access charges have been reduced over the years, while the insatiable IXCs have been consistently raising fees and charges. See, OTS St. 1-SR, p. 11. Incredibly, Qwest argues that it will only be satisfied if access charges are reduced and local exchange rates are increased a "reasonable"

[ ] per month. Qwest Exceptions, p. 7.

Significantly, Qwest claims in its main brief that the Commission should "refrain from requiring IXC carriers in a competitive marketplace to adhere to a regulatory mandate to pass through the savings from any [access] reductions to their end users." Qwest Main Brief, p. 23. The truth of the matter is that the IXCs have no intention of passing through any access reductions to their long distance customers. Thus, the Commission should realize that long distance customers in Pennsylvania will not benefit from lower access charges and must act to ensure that these IXCs continue to pay their fair share of the cost of the local loop. At this juncture, the Commission should determine that the access reductions proposed in the Verizon/OCA Joint Proposal are sufficient. The avarice of the IXCs should not be condoned.

1. OTS Response To MCI Exception #1.

Beginning at p. 3 of its Exceptions, MCI argues that the ALJ erred by refusing to bring access rates to cost. MCI claims that the record shows that "if the Commission reduces Verizon's intrastate access charges to interstate levels, Verizon would still be earning above-cost revenues. .... Thus, Verizon is still

earning above-cost revenues and therefore reducing access rates to interstate levels would still maintain a subsidy for Verizon." MCI Exceptions, p. 8.

However, MCI has offered no evidentiary support for this broad claim. At minimum, MCI should have distinguished between traffic sensitive and non-traffic sensitive access charges in its "analysis." In fact, OTS witness Joseph Kubas made such a distinction in his testimony which demonstrates that at least one of VZ-PA's non-traffic sensitive access charge components (the Carrier Charge or "CC") is actually below cost. OTS St. 1, p. 4. Mr. Kubas demonstrated this by providing cost data that showed that if only 10% of the cost of the loop is allocated to IXC toll, the cost would be [ ] per month per line, which is much less than the current VZ-PA rate of $0.63 per month per line. See OTS Ex. 1, Sched. 2 (revised) (attached at Appendix A to these Reply Exceptions). In fact, OTS witness Mr. Kubas supports cost based rates. This is demonstrated on OTS Ex. 1, Sched. 3 (revised) (attached at Appendix B to these Reply Exceptions), where he indicated that VZN's CC of $8.63 per month per line should be reduced.

In short, the IXCs advocate that access charges should be based upon cost, yet insist that no loop costs be allocated to them. This self-serving position is not in the public interest and should be rejected. This MCI exception should be denied.

2. OTS Response To MCI Exception #2.

At p. 6 of its Exceptions, MCI argues that the ALJ erred by refusing to establish a time frame to bring access rates to cost because there is ample evidence

in the record of this proceeding to establish future access reductions. In fact, the ALJ's determination is primarily based upon the fact that the increase in local residential exchange rates would be limited under the Verizon/OCA Joint Proposal. Recommended Decision, p. 59. MCI's claim that the record supports further reductions is without merit. On the contrary, the Verizon/OCA Joint Proposal, which allows for [ ] million per year in access charge reductions, is substantial and more than adequate based upon the record developed in this proceeding.

Amazingly, MCI advocates that no loop cost should be assigned to IXCs, even though it uses the loop. The Commission has determined on a number of occasions that the loop is a joint cost that should be shared among the services that use the loop. See, *Formal Investigation to Examine and Establish Updated Universal Service Principles for Telecommunications Services in the Commonwealth*, Docket No. I-00940035 (entered January 28, 1997) ("*Universal Service Order*"), Order at p. 82; *Pennsylvania Public Utility Commission v. Bell Atlantic Inc.*, Docket No. R-00963350 (entered December 16, 1996) ("*Bell Atlantic Order*"), Order at p. 23.

According to OTS Exhibit No. 1, Schedule 1 (attached to these Reply Exceptions at Appendix C), the cost to provide a local loop is $15.09 per month. The $0.63 per month per line CC set forth in the Verizon/OCA Joint Proposal is approximately 4% of the cost Verizon actually incurs to provide the local loop ($0.63/$15.09 = 4%). This evidence is more than sufficient for the Commission to

reaffirm in this proceeding that a CC of $0.63 per month per line is just and reasonable. In short, the Commission should determine that the ALJ correctly concluded that the record in this proceeding supports the reductions proposed by the Verizon/OCA Joint Proposal and further reductions are not required based upon this record.

3. OTS Response To AT&T Exception #1.

Although AT&T supports the ALJ's adoption of the Verizon/OCA Joint Proposal as a first step to access charge reform, AT&T argues that the ALJ erred in recommending that further reductions be postponed until a later proceeding. AT&T states "*reductions to Verizon North's Carrier Charge that Verizon* estimates will result from [sic] implementation proposal will still leave that company's access rates far in excess of Verizon's interstate rates.... Moreover, the proposal does nothing to relieve the existing bloat in Verizon Pennsylvania Inc.'s intrastate access rates." AT&T Exceptions, p. 4.

AT&T is mistaken. OTS witness Mr. Kubas has demonstrated that certain access charges are clearly priced above cost. Mr. Kubas has maintained that the portion the IXCs pay for their use of the local loop should be about [ ] per month per line. See, OTS Main Brief, pp. 10-11. Therefore the proposed rate of $0.63 per month per line in the Verizon/OCA Joint Proposal is actually well below this cost. Since the CC portion of the access charge is well below cost, there is simply no reason to keep the record open or set a time table for additional access charge reductions as proposed by AT&T. Moreover, switched access was not a

significant issue in this case since Verizon simply rebalanced the VZ-PA and VZN rates to make them uniform. Unfortunately, Verizon did not provide a valid cost of service study in this proceeding to determine if any of the switched access components are above cost.

In summary, the rates proposed in the Verizon/OCA Joint Proposal represent a reasonable compromise based upon the evidentiary record developed in this proceeding. The record does not support further access charge reductions at this time.

III. CONCLUSION

For the reasons stated herein, the exceptions filed by AT&T, MCI and Qwest should be denied by the Commission.

Respectfully submitted,

Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff
Pennsylvania Public
Utility Commission

Dated: December 18, 2003

APPENDIX A

OTS Exhibit No. 1
Schedule 2
(Revised)

Cost of Local Loop and
Amount Recovered Through the CC Charges
for Verizon

Docket No. C-20027195

	(A)		Percent of Total (B)	TOTAL Verizon (C)
1	Weighted Average			
2	Loop Cost		100.0%	$15.09
3	Services that Use Local Loop:			
4	Local Service	*	74.0%	$11.16
5	Interstate IXC Access Service		6.0%	$0.91
6	Verizon Toll		3.5%	$0.53
7	ITORP Toll		0.5%	$0.08
8	Intrastate IXC Access Service		10.0%	$1.51
9	Other Services		6.0%	$0.91
10		Totals	100.0%	$15.10
11	**OTS Recommended Local Loop Cost That**			
12	**Should Be Recovered Through the**			
13	**Intrastate IXC Carrier Charge**			**$1.20**

14 * From Page 82, Docket I-00940035,
Order Entered January 28, 1997

APPENDIX B

OTS Exhibit No. 1
Schedule 3
(Revised)

Carrier Charge Rates and Revenue for Verizon

Docket No. C-20027195

{Begin Proprietary}

VERIZON PROPOSAL

	(A)	Share of Toll Market (B)	Number of Lines x 12 (C)	Present CC (D)	Present Revenue (E = C X D)	Revenue Reduction (F = E - H)	Proposed CC (G)	Proposed Revenue (H= C X G)
1	Verizon PA							
2	IXC Access	100%		$0.63	$0	$0	$0.00	$0
3	Verizon North							
4	IXC Access	86.4%		$8.6354	$0	$0	$0.00	$0
5								
6								
7	TOTAL VN	86%			$0	$0		$0
8	Total Verizon		0		$0	$0		$0

OFFICE OF TRIAL STAFF RECOMMENDATION

		Share of Toll Market	Number of Lines x 12	Present CC	Present Revenue	Revenue Reduction	Proposed CC	Proposed Revenue
	Verizon PA							
9	IXC Access	100%		$0.63	$0	$0	$1.20	$0
10	Verizon North							
11	IXC Access	100.0%	0	$8.6354	$0	$0	$1.20	$0
12								
13								
14	TOTAL VN	100%	0		$0	$0		$0
15	Total Verizon		0		$0	$0		$0
16				**Total CC Difference (Line 8 - Line 15)**				$0

{End Proprietary}

APPENDIX C

OTS Exhibit No. 1
Schedule 1

Weighted Average Local Loop Cost for Verizon

Docket No. C-20027195

		Verizon PA Number of Lines *1	Verizon North Number of Lines *1	Verizon TOTAL Number of Lines	Percent of Total Lines	UNE Rate*2	Weighted Rate
	(A)	(B)	(C)	(D= B+C)	(E)	(F)	(G=EXF)
1	Density Cell 1						
2	Density Cell 2						
3	Density Cell 3						
4	Density Cell 4						
5	TOTAL						**$15.09**

6 *1 Response to OTS -3
7 *2 Verizon Tentative Order Rates - Docket No. R-00016683
filed December 4, 2002

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
v.	:	Docket No. C-20027195
Verizon North, Inc.	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions [Non-Proprietary]** of the Office of Trial Staff, dated December 18, 2003, either personally, by first class mail, electronic mail, express mail, or by fax upon the persons listed below:

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Kenneth L. Mickens
Senior Prosecutor
Office of Trial Staff

Dated: December 18, 2003
Docket No. C-20027195

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December 18, 2003

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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon Pennsylvania, Inc.
Docket No. C-20027195

Dear Secretary McNulty: PUBLIC VERSION

Enclosed please find the original and nine (9) copies of the Reply Exceptions on behalf of the Office of Small Business Advocate. I am providing both a **Proprietary Version** and Non-Proprietary Version. As evidenced by the enclosed certificate of service, a copy has been served on all active parties in this case.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Angela T. Jones
Assistant Small Business Advocate

Enclosures
cc: Cheryl Walker Davis, Director
Office of Special Assistants

Hon. Cynthia Williams Fordham
Administrative Law Judge

Parties of Record

RE
128

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
v.	:	Docket No. C-20027195
Verizon North Inc.	:	

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Reply Exceptions on behalf of the Office of Small Business Advocate in the manner indicated upon the persons addressed below:

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Angela T. Jones
Assistant Small Business Advocate

Date: December 18, 2003

ORIGINAL

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, INC.	:	
V.	:	DOCKET NO. C-20027195
VERIZON NORTH, INC.	:	

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REPLY EXCEPTIONS ON BEHALF OF THE OFFICE OF SMALL BUSINESS ADVOCATE

NON-PROPRIETARY VERSION

PUBLIC VERSION

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Assistant Small Business Advocate

For: William R. Lloyd, Jr.
Small Business Advocate

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Dated: December 18, 2003

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY

A. INTRODUCTION

On December 30, 2002, Verizon Pennsylvania, Inc. ("VZ-PA") and Verizon North, Inc. ("VZN") (collectively "VZ" or "Petitioner") filed a Joint Petition ("VZ Petition") regarding the further reduction of their access charges pursuant to the Bell Atlantic-Pa.-GTE Merger Order[1], the Global Order[2] and the generic access charge investigation at Docket No. M-00021596. On March 21, 2002, AT&T Communications of Pennsylvania, Inc. ("AT&T") filed a Formal Complaint docketed at C-20027195 against VZN to have its access charges reduced to VZ-PA's levels as required in the Merger Order at A-310200F0002.

On November 18, 2003, the Secretary of the Pennsylvania Public Utility Commission ("Commission") issued the Recommended Decision ("R.D.") of Administrative Law Judge ("ALJ") Cynthia Williams Fordham in this matter. The effect of the ALJ's decision was to recommend that the Commission approve the joint VZ and Office of Consumer Advocate ("OCA") proposal and review the impact of the access charge reductions attributable to the joint proposal and further reduce access charges in subsequent proceedings, if necessary.

On December 8, 2003, the Office of Small Business Advocate ("OSBA"), AT&T, MCI WorldCom Network Services, Inc. ("MCI") and Qwest Communications Corp. ("Qwest") filed Exceptions to the R.D. In accordance with the schedule established by Secretarial Letter, the OSBA

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[1] Re Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket Nos. A-310200F0002, A-311350F0002 and A-310222F0002, 1999 Pa. PUC LEXIS 86(Opinion and Order entered November 4, 1999) ("Merger Order").

[2] Re Nextlink Pennsylvania, Inc., et al., Docket No. P-00991648; P-00991649, 93 PaPUC 172 (entered September 30, 1999) ("Global Order"); 196 P.U.R. 4th 172, *aff'd sub nom.* Bell Atlantic-Pennsylvania, Inc. v. Pa. P.U.C., 763 A.2d 440 (Pa. Cmwlth. 2000), *alloc. granted.*

files these Reply Exceptions responding to the Exceptions of AT&T, MCI, and Qwest (collectively, the Interexchange Carriers ("IXCs")).

B. SUMMARY

In these Reply Exceptions, the OSBA replies to issues concerning: (1) the reduction of access charges to zero as unjust and unreasonable; (2) the reduction of access charges to zero in conjunction with approving the VZ/OCA proposal as inequitable; and (3) the approval of the VZ/OCA proposal is contrary to recent Commission declaration regarding settlements in the public interest. The OSBA has shown that established regulatory policy, Commission precedent, and Pennsylvania law support rejecting the Exceptions of the IXCs.

As set forth in its Exceptions, the OSBA finds that the ALJ's recommendation to approve the VZ/OCA proposal does not pass muster for supporting the public interest. Consequently, the Commission must reject the ALJ's recommendation in its entirety and remand this proceeding for further evidentiary hearings.

II. REPLY EXCEPTIONS

A. To eliminate the Carrier Charge is against the public interest. AT&T Exceptions at 5,12; MCI Exceptions at 3-9; Qwest Exceptions at 4-14.

The OSBA agrees that VZ's intrastate switched access charges should be reduced in a competitively-neutral manner.[3] It is on the question of what constitutes a competitively-neutral switched access charge where OSBA parts company with the IXCs. The IXCs contend that the flat charge per access line per month (the carrier charge ("CC")) should be reduced to zero because it

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[3] See Qwest Exceptions at 5. VZ is the merged VZN and VZ-PA companies. The OSBA advocates that the access charges for the merged company be reduced.

"exists solely to provide a contribution to the cost of the loop," and is not reflective of cost.[4] In other words the IXCs want to use the loop for free.

The OSBA disagrees.

All three (3) public advocate offices independently concluded that a CC at $1.20 is reasonable for the recovery of non-traffic sensitive access costs allocated to intrastate jurisdictional services.[5] All of the public advocates found it reasonable to allocate some charge to toll carriers for the local loop.[6] The OSBA relied upon the FCC ordered assignment of loop costs at twenty-five percent (25%) to interstate toll use. The OSBA analysis originated with the VZ claim of **[BEGIN VZ PROPRIETARY]** ___ **[END VZ PROPRIETARY]** for the loop cost. Based on equal availability of the loop, the loop cost for intrastate cost recovery should be divided equally between toll (access) and local. Since the FCC already assigned interstate toll at twenty-five percent (25%), twenty-five percent (25%) is reasonable for intrastate toll (intrastate access charges). Twenty-five percent of the loop cost would be **[BEGIN VZ PROPRIETARY]** ___ **[END VZ PROPRIETARY]** for intrastate cost recovery of the loop.

A CC at **[BEGIN VZ PROPRIETARY]** ___ **[END VZ PROPRIETARY]** would be a significant increase for the VZ-PA service territory and would not reduce the access charges from the current **[BEGIN VZ PROPRIETARY]** _____ **[END VZ PROPRIETARY]** for the VZN

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[4] AT&T Exceptions at 5 (bring VZ's intrastate switched access rates down to interstate switched access rate levels), MCI Exceptions at 4-6 (alleging cost allocation based on telecommunications services that use the loop would promote economic inefficiency, wasting societal resources and distorting consumption and production incentives), and Qwest Exceptions at 8-10 (intrastate switched access rates should be reduced to achieve parity with interstate switched access rates).

[5] See OCA Stmt. No. 1 at 5, point (3) and 12, l. 26- 13, l. 9; OTS Stmt. No. 1 (Revised) at 18; Tr. at 389 l. 2 - 11; Revised OSBA Stmt. No. 1 at 16, l. 22 - 17, l. 7.

[6] See OCA Stmt. No. 1 at 31, l. 25 - 32, 10; OTS Stmt. No. 1 (Revised) at 7, l. 3 - 8, l. 13; Revised OSBA Stmt. No. 1 at 7, l. 8-13; Tr. at 455, l. 19 - 457, l. 22.

service territory. Proposing a CC at **[BEGIN VZ PROPRIETARY]** ___ **[END VZ PROPRIETARY]** would be inconsistent with the Global Order which, among other things, directed that incumbent local exchange carriers ("ILECs") operating in Pennsylvania reduce access charges and an investigation be initiated by January 2001 to determine primarily how the CC could be reduced.

A CC of $1.20 is reasonable as it lowers the VZN access charge, upholds the Commission policy of services that use the loop should contribute to the cost recovery of the loop, and achieves parity of the access charges among the VZN and VZ-PA companies.[7] A CC of $1.20 is just **[BEGIN VZ PROPRIETARY]** __ **[END VZ PROPRIETARY]** of the cost of a loop. The OSBA witness, Mr. Buckalew testified,

> At this level, toll carriers are contributing very little to a resource that is an integral part of their operations. Without access to the loop the toll carriers would be out-of-business. ... [T]oll carriers contribute very little to use this crucial resource because the FCC adopted end user charges. [8]

The proposed CC of $1.20 is minimal cost recovery for intrastate toll carriers' use of the local loop. Lower recovery levels for the CC are not reasonable as they transfer a disproportionate share of the cost of the loop away from toll carriers and onto local exchange end users.[9]

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[7] See, In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035, Opinion and Order entered January 28, 1997 at 82-85 (regarding sharing loop cost among services that use the loop), and Merger Order, Docket Nos. A-310200F0002, A-311350F0002 and A-310222F0002, 199 Pa. PUC Lexis 86, [29] and [67 ordering ¶ 11] (Opinion and Order entered November 4, 1999) (regarding directing statewide parity of access charges among VZN and VZ-PA service territories).

[8] Id, at 6, l. 8-12.

[9] Id, at 5, l. 13-14.

A proposed CC of $1.20 would not require an increase in basic local exchange service rates because as the decrease in the CC for VZN would be offset by the increase in the CC for VZ-PA. The OSBA contends that the CC should never fall below $1.20 because $1.20 represents a reasonable cost recovery for use of the local loop for intrastate access. Thus, the OSBA sees no reason to further reduce intrastate switched access rates and no additional revenue requirement for VZ.

The IXCs contend that the CC should be reduced consistent with the continual FCC reduction of interstate switched access rates.[10] However, the FCC has never ruled or ordered state commissions to allocate loop costs to any intrastate service or services. Instead, the FCC has established rules that determine how loop costs are to be allocated between the interstate and state jurisdictions.[11]

The FCC's rules for allocation of loop costs between interstate and intrastate do not prescribe how this Commission must allocate intrastate loop cost to services. The rules do support an allocation of loop costs to the services that use the loop. The fundamental federal principle that underlies the rules for separating telecommunications property between interstate and intrastate is "actual use." CFR 47 Part 36.2(a)(1) states: "Separations are intended to apportion costs among categories or jurisdictions by actual use or direct assignment."

If local exchange rates were responsible for 100 percent of the loop costs, then the federal rules would assign 100 percent of the loop costs to the intrastate jurisdiction. However the rules do not assign 100 percent to the intrastate jurisdiction. Part 36.154 assigns 25 percent of the loop

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[10] Qwest Exceptions at 9, MCI Exceptions at 7-8, AT&T Exceptions at 5,12.

[11] See Section 47 Code of Federal Regulations, Part 36.

costs to interstate because the interstate toll services use the loop; that is the only portion of loop costs over which the FCC has jurisdiction. The FCC has taken the costs assigned to interstate and established an interstate flat end-use charge for incumbent LECs--but that is rate design, not cost allocation.

The FCC determines the pricing rules for interstate services and **this Commission** determines the pricing rules for intrastate services. The FCC has not ordered or required the states to assign the other 75 percent to any service. The recovery of the other 75 percent of the loop costs, the portion allocated to Pennsylvania, is and has always been determined by this Commission.

This Commission has recognized and adopted the position that the services that use the loop should share in the cost recovery of the loop. Indeed, that is the reason the Commission allocated the intrastate share of loop costs (the residual 75 percent after the FCC takes 25 percent) to all services that use the loop in the Universal Service Order.[12] There is nothing that prohibits allocating access costs to different services.[13] Allocating zero loop costs to intrastate toll services is simply wrong.

B. Elimination of the Carrier Charge in conjunction with approving the VZ/OCA proposal is inequitable. AT&T Exceptions at 4-6,9-13; MCI Exceptions at 3-6,9,17.

Both AT&T and MCI suggest that the Commission use the VZ/OCA proposal as a first step in a phase down of the intrastate access charges to interstate access levels. As MCI makes clear,

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[12] In Re: Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth Docket No. I-00940035, Opinion and Order entered January 28, 1997 at 82-85 ("Universal Service").

[13] See, Revised OSBA Stmt. No. 1.0 at 15, l. 18 - 16, l. 19, citing, Alfred E. Kahn, The Economics of Regulation, (1970), Volume I, at 78.

reduction of intrastate access rates to interstate levels would yield the elimination of the CC, since there is no CC at the interstate level.[14] Both entities request the Commission to reject the ALJ's recommendation to close this case and review, in subsequent proceedings, the impact of current reductions and the need for further reductions. According to AT&T and MCI, the ALJ's recommendation would cause unnecessary delay.[15]

The VZ/OCA proposal is definitive in capping the increase to residential basic local service rate increases on a combined VZN and VZ-PA basis at **no more than** $40 million.[16] The VZ/OCA proposal has a total revenue requirement of **[BEGIN VZ PROPRIETARY]** _____ **[END VZ PROPRIETARY].** As explained in the OSBA Exceptions, the revenue requirement allocated to non-VZ contracting business customers is unknown but *is, at a minimum,* **[BEGIN VZ PROPRIETARY]** _____ **[END VZ PROPRIETARY]**. The OSBA found this magnitude of revenue requirement and its being indeterminate to be inequitable.

To move intrastate access rates to interstate levels would require a total access reduction of approximately **[BEGIN VZ PROPRIETARY]** _____.[17] **[END VZ PROPRIETARY]** Simple subtraction shows that the difference of **[BEGIN VZ PROPRIETARY]** _____ **[END VZ PROPRIETARY],** at a minimum, would be borne by customers outside of the residential basic local service rate class. VZ states,

> Although not included in the Joint Proposal, [VZ] would also propose that the remainder of the access reduction (that is, the amount above

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[14] MCI Exceptions at 9.

[15] See MCI Exceptions at 9; AT&T Exceptions at 9-12.

[16] See R.D. Attachment A, DMB Exhibit 1.

[17] AT&T Cross Exhibit 7.

> $40 million) would be recovered through increases to business local service rates, again on a combined [VZ-PA and VZN] basis.[18]

Whether those business customers bearing this revenue requirement would be exclusively business basic local service rate customers, or would be business basic and all VZ CLASS[19] customers, or would be some other customer mix exclusive of residential basic local service customers, is not known. The record does not substantiate any such allocation.

Moreover, the record does not establish that this additional revenue requirement is reasonable. Furthermore, the ALJ did not explore the reasonableness of whether services other than basic local service should bear some portion of that increase. It is unreasonable for this significant additional revenue requirement to be borne exclusively by the business local service customer class because of the $40 million cap on the revenue requirement to be borne by the residential customer class. At a minimum, there would need to be further evidentiary hearings to establish the reasonable revenue requirement if the IXCs' Exceptions were granted and to allocate that reasonable revenue requirement among customer classes.

C. Recent Commission precedent requires sufficient information to support a settlement. Sufficient information is lacking here. R.D. at 58; AT&T Exceptions at 4-6; MCI Exceptions at 6-9.

AT&T states, "the access reductions contemplated in the [VZ]/OCA proposal reflect a *significant step in the right direction towards a complete access reform for both* Verizon companies."[20] MCI suggests that the Commission permit the VZ/OCA proposal to go into effect,

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[18] VZ Stmt. 1.1 at 7 l. 21 - 8 l. 1.

[19] Custom Local Area Switch Service/Signaling System ("CLASS"); examples are: Caller ID, Call Trace, Call Return, Call Waiting ID, Selective Call Rejection.

[20] AT&T Exceptions at 5.

but establish benchmarks to further reduce access charges in the future. [21] Both parties use the VZ/OCA proposal as a foundation to resolve the reduction of intrastate access charges immediately, and then to further reduce charges in the near future.

The OSBA contends that the VZ/OCA proposal does not uphold the fundamental principle of substantiating the public interest and, thus, is not an appropriate base to reduce access charges.

On December 4, 2003, Commissioner Kim Pizzingrilli offered her motion regarding the Pennsylvania Public Utility Commission v. Philadelphia Gas Works, Docket No. M-00031768.[22] The Commission had before it a request to grant approval of a settlement agreement between the Law Bureau Prosecutory Staff and the Bureau of Consumer Services and the Philadelphia Gas Works. Although Commissioner Pizzingrilli acknowledged the Commission's policy to promote settlements, she concluded that there was insufficient information to support the proposed resolution of that proceeding because of the lack of substantiating record evidence to support the proposed settlement. Because of the lack of substantial evidence in the record before the Commission, the Commission determined that it could **not** definitively approve the settlement as being in the public interest.[23]

The OSBA contends that the Commission should reach a similar determination in this proceeding. To use the VZ/OCA proposal as a starting point for access charge reduction and to build from it, only exacerbates the problem of not supporting the public interest. The record lacks

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[21] MCI Exceptions at 9 and 17.

[22] See, Pennsylvania Public Utility Commission v. Philadelphia Gas Works Motion of Commissioner Kim Pizzingrilli, Docket No. M-00031768, moved and adopted unanimously on December 4, 2003. ("PaPUC v. PGW")

[23] Id at 2, see also PaPUC v. PGW, Statement of Commissioner Wendell F. Holland, Docket No. M-00031768, dated December 4, 2003.

several significant facts that are necessary to substantiate the public interest in the resolution of access charge reduction.

The recommendation at issue is a joint proposal by two parties, VZ and OCA. The ALJ states, "...six of the seven parties who presented witnesses or filed briefs agree with portions of the proposal."[24] However, deficient in the record is evidence of:

> (1) Whether the revenue requirement of $40 million borne by VZ residential local exchange customers is reasonable;
>
> (2) Whether it is reasonable to have an unknown and indeterminate revenue requirement allocated to the non-VZ contracting local exchange service business customers;
>
> (3) Whether the difference between the $40 million borne by VZ residential local exchange customers and the total revenue requirement of the VZ/OCA proposal is a reasonable amount to be borne solely by non-VZ contracting local exchange service business customers; and
>
> (4) Whether it is equitable for contracting VZ business customers to be exempt from bearing some reasonable amount of the revenue requirement to offset the reduction of intrastate access charges.

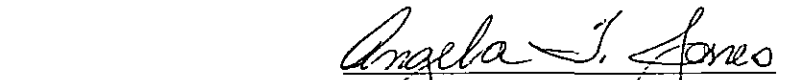
Insufficient evidence to support the VZ/OCA proposal results in the inability to find the proposal in the public interest. There exists no substantial differentiation between this proceeding and the declaration of the Commission in PaPUC v.PGW that requires a different result.

[24] R.D. at 58. Qwest in its Exceptions does not definitively endorse the VZ/OCA proposal. However, Qwest does not oppose the proposal, or except to the ALJ's statement that six out of the seven active parties agree with portions of the proposal.

III. CONCLUSION

For the reasons set forth in these Reply Exceptions, the OSBA respectfully requests the Commission to deny the IXCs' Exceptions. For the reasons previously stated in the OSBA's Exceptions, Main and Reply Briefs, the OSBA respectfully requests the Commission to reject the ALJ's Recommend Decision and to remand for further hearings on issues consistent with the arguments contained therein.

Respectfully submitted,



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Dated: December 18, 2003

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December 18, 2003

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Re: AT&T Communications of Pennsylvania, Inc.
v. Verizon North Inc.,
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find for filing an original and nine (9) copies of the Office of Consumer Advocate's Reply Exceptions in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Joel H. Cheskis
Assistant Consumer Advocate

Enclosures
cc: All parties of record
Hon. Cynthia Fordham, ALJ
*68614

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania Inc.	:	
v.	:	Docket No. C-20027195
Verizon North Inc.	:	

REPLY EXCEPTIONS OF THE
OFFICE OF CONSUMER ADVOCATE

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DATED: December 18, 2003

TABLE OF CONTENTS

I. INTRODUCTION

On December 30, 2002, Verizon Pennsylvania Inc. and Verizon North Inc. (collectively referred to as "the Verizon Companies") filed a Joint Petition regarding the equalization and reduction of their access charges. This Petition was filed pursuant to the Bell Atlantic-Pennsylvania/GTE Merger Order[1] issued by the Pennsylvania Public Utility Commission on November 4, 1999, the Commission's September 30, 1999 Global Order[2] and the generic access charge investigation docketed at M-00021596. On March 21, 2002, AT&T Communications of Pennsylvania, Inc. filed a formal complaint against Verizon North seeking to have Verizon North's access charges reduced to Verizon PA's levels pursuant to the requirements in the Commission's Merger Order. The Office of Consumer Advocate ("OCA") intervened in AT&T's complaint proceeding on April 10, 2002. AT&T's Complaint was docketed at C-20027195 and was initially dismissed by Chief Administrative Law Judge Christianson but was later reinstated by Commission Order entered December 24, 2002.

The Commission's December 24, 2002 Order also bifurcated the access charge investigation so that all access issues pertaining to Verizon, including AT&T's complaint, would be litigated at the C-20027195 docket. Separately, the Commission also established a proceeding to address the access charges of the Sprint/United Telephone Company and the Rural Telephone Company Coalition ("RTCC"), all other Pennsylvania incumbent local exchange carriers ("ILECs") other than the Verizon Companies. The Commission docketed that proceeding at M-00021596 and approved a settlement by Commission order on July 15, 2003.[3]

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[1] Re: Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, 93 PaPUC 395 (November 4, 1999)("Merger Order").

[2] Re: Nextlink Pennsylvania, Inc., 93 PA PUC 172 (Sept. 30, 1999)("Global Order"), 196 PUR 4th 172, aff'd sub nom, Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission, 763 A.2d 440 (Pa.Cmwlth 2000)("Global Appeal Order"), alloc. granted.

[3] Access Charge Investigation Per Global Order of September 30, 1999, Docket No. M-00021596, Order (entered July 15, 2003)("Sprint/RTCC Order").

With regard to the Verizon Companies' Petition, the Commission referred that Petition to the Office of Administrative Law Judge for evidentiary hearings and a recommended decision on May 5, 2003. The matter was assigned to Administrative Law Judge Cynthia Williams Fordham and a prehearing conference was held on May 29, 2003 wherein a procedural schedule was established. Pursuant to that procedural schedule, the parties submitted direct, rebuttal and surrebuttal testimony and evidentiary hearings were held on August 25th and 26th, 2003. The OCA fully participated in the proceeding before ALJ Fordham including presenting a witness and cross-examining other parties' witnesses during hearings.

On November 18, 2003, ALJ Fordham issued her Recommended Decision ("R.D.") wherein she recommended that the Commission adopt the Joint Settlement proffered by Verizon and the OCA. ALJ Fordham found that the Joint Settlement was in the public interest and represented a reasonable compromise of the outstanding issues. ALJ Fordham found that the Joint Settlement achieves the goals of the Merger Order in that there will be access charge parity between the Verizon companies under the Joint Settlement. ALJ Fordham recommended that the Verizon/OCA Joint Settlement be approved.

As discussed further below, AT&T, the Office of Small Business Advocate ("OSBA"), MCI WorldCom Network Services, Inc. ("MCI") and Qwest Communications Corporation ("Qwest") all filed Exceptions to ALJ Fordham's Recommended Decision. The OCA, Verizon and the Commission's Office of Trial Staff did not file any Exceptions. In general, MCI, AT&T and Qwest (collectively referred to as "the IXCs" or "interexchange carriers") did not oppose the Verizon/OCA Joint Settlement as a first step in what they perceive to be a need for even further access reductions. Their exceptions generally state that the Joint Settlement was a good start to access reform, but the Commission must go further in this Order.

It is in response to these Exceptions that the OCA files its Reply Exceptions. In particular, the OCA submits that the Commission should adopt the Verizon/OCA Joint Settlement as a reasonable compromise in this proceeding. The Exceptions filed by the IXCs in this proceeding are without merit and should be rejected. Among other things, the IXCs are incorrect to argue that they have no obligation to support the common line cost of the local loop. Furthermore, there is no need at present to specify if or when future access reductions may occur. In support of its Reply Exceptions, the OCA submits as follows:

II. SUMMARY

The Verizon/OCA Joint Settlement should be implemented as recommended by ALJ Fordham. After a thorough review of all of the arguments raised in this proceeding, ALJ Fordham recommended that the Joint Settlement should be adopted. R.D. at 58-59. The OCA continues to advocate in favor of the Joint Settlement as the best means of resolving the issues raised in the proceeding.

The Joint Settlement is a fair compromise that dramatically reduces Verizon access rates on a comprehensive basis, and particularly the high access charges of Verizon North. While the IXCs may also argue at length regarding the correct access rates to establish in this proceeding, the Joint Settlement is the best means of resolving these issues at this time. As discussed further below, the OCA opposes the efforts of the IXCs to advocate in favor of greater access reductions in this case; primarily the OCA concern is related to greater levels of local rate increases through rebalancing that might result. The Joint Settlement reflects an appropriate compromise and the best means of a resolution of this current proceeding.

The IXCs fail to recognize in their exceptions the substantial reductions to be achieved in access rates as a result of the Joint Settlement. MCI suggests that the Joint Settlement reduces Verizon access rates "only slightly" while then recognizing that the Joint Settlement will reduce the Verizon North carrier charge from a "whopping $8.64/line/month" to the Verizon-PA carrier charge level of $.63/line/month. MCI Exc. at 6. Reducing the Verizon North carrier charge by approximately $8.00 per month is a significant reduction. The OCA also emphasizes that this change results in the "parity" of access charges between the two Verizon companies that was much of the reason for this proceeding.

This proceeding was instituted pursuant to the Commission's directives in the Global Order and the Merger Order. As the OCA articulated in its Main Brief, in the Global Order, the Commission initiated an investigation "to further refine a solution to the question of how the Carrier Charge (CC) pool can be reduced." Global Order at 207. In the Merger Order, the Commission required a proceeding be commenced "for the purpose of developing access charge parity for both companies [then-Bell Atlantic and then-GTE] based on consolidated cost studies." Merger Order at 413. The Verizon/OCA Joint Settlement satisfies these objectives and therefore should be adopted, as ALJ Fordham recommends. In this proceeding, the Commission is not required to reduce access charges to the IXCs definition of "cost" which excludes the IXCs from having to contribute to the common costs of the network.

III. REPLY EXCEPTIONS

OCA Reply Exception No. 1 - The Interexchange Carriers Are Incorrect To Argue That They Have No Obligation To Support The Common Line Costs Of The Local Loop. MCI Exceptions No. 1, 3 and 4; and Qwest Exception No. 1.

Many of the arguments made by the IXCs in this case, i.e. AT&T, MCI and Qwest, relate to the question of how low access charges should go and what is the appropriate definition of the "cost" of access. MCI Exc. at 3-6; AT&T Exc. at 9; Qwest Exc. at 5. The OCA has argued at length in its Briefs in this proceeding that the cost of access properly includes some portion of the joint and common loop costs that the IXCs use to carry their traffic. OCA M.B. at 14-23, OCA R.B. at 4-8. The OCA will not repeat those arguments in these Reply Exceptions, but will respond to the IXCs and the points that they have made in their Exceptions.

The OCA's cost recovery point is simple: All telecommunications companies should pay for the facilities that they use. The IXCs are largely dependent upon the use of Verizon's loop facilities in order to run their operations. Without the availability of the Verizon loops, the IXCs would generally handle no traffic, recover no revenue, and earn no profit. Thus, making some payment for the use of those loops is necessary and appropriate. The question should be about how much loop cost recovery should come from access rates, not whether access should pay for any portion of the cost of the loop.

The "cost" based rates which the IXCs advocate for really means that the IXCs are willing to pay only for the additional or incremental costs that they place on the network, but nothing more. The problem is that everyone wants to use the network, but few are willing to pay

for it.[4] "Cost based rates" seems an attractive catch phrase – until one considers that most network costs are not included in the IXCs' definition of such rates.

OCA witness, Mr. William Dunkel, has explained that, as the IXCs have defined cost, this includes only the "incremental" cost. OCA St. 1-S at 8. Verizon has stated that the IXCs should contribute toward the cost of the loop as the IXCs "still can and should provide some support to the shared fixed and common costs of the network by being priced above incremental costs." Vz. M.B. at 39. Yet, the IXCs argue that this incremental cost floor is all that they should pay as "cost based" rates.[5] Such incremental cost pricing concepts simply overlook the fact that most of the network costs are not incremental to any particular service, but shared across the network. Loop costs are an outstanding, and the most significant, example of such shared costs. All Verizon services – including access service – depend to some extent on the existence and use of the loop.

As discussed further in the OCA's Main Brief, this Commission has repeatedly determined that loop facilities costs are joint costs as shared usage leads to shared cost allocation. OCA M.B. at 14-18.[6] Furthermore, the OCA has shown that other state commissions have also concluded that local loop facilities costs are properly allocated across all the services that use the local loop. Id. at 18-20.[7] As well, the United States Supreme Court and the Federal Communications Commission ("FCC") have affirmed the principle that loop facilities costs should

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[4] MCI references "the antiquated position that long distance carriers should be forced to contribute towards the cost of a loop." MCI Exc. at 5.

[5] Qwest puts this argument clearly in its Exceptions by arguing that, since providing access over the local loop "requires no additional functionality and generates no additional cost to the local carrier," Qwest should not contribute toward loop costs. Qwest Exc. at 5.

[6] *Citing*, Universal Service Investigation, Docket No. I-00940035, Opinion and Order (entered Aug. 31, 1995) and Formal Investigation to Examine and Establish Updated Universal Service Principles and Policies for Telecommunications Services in the Commonwealth, Docket No. I-00940035, Opinion and Order (entered July 31, 1997).

[7] *Citing*, Washington Utilities and Transportation Commission v. U.S. West Communications, Inc., Docket No. UT-950200, 169 PUR 4th 417 (April 11, 1996) and Re: Southwestern Bell Telephone Company, Case Nos. TR-83-253 and TR-83-288, 26 MO.P.S.C. (N.S.)(1983).

be allocated to all services that use the loop. Id. at 20-22.[8] The FCC has recognized, as recently as this past summer, the multitude of services that can be provided over the local loop. Id. at 22.[9] As such, there is significant precedent to reject the IXCs argument that they have no obligation to support the common line cost of the local loop.

Most importantly, however, is the Commonwealth Court decision in the Global Appeal Order that is contrary to the IXCs position in this case. In that decision, the Commonwealth Court upheld that the PUC conclusion that access rates do not need to be reduced to incremental cost. In the Global Appeal Order, AT&T appealed the Global Order contending that the PUC's decision to set access rates above incremental costs was illegal. In making its decision, the Commonwealth Court noted the testimony of the OCA witness regarding AT&T's request to reduce access rates to incremental cost. The Commonwealth Court wrote:

> [t]he Office of Consumer Advocate responds to AT&T by submitting that there is no legal authority requiring the PUC to reduce access rates to the incremental cost of access service. OCA witnesses testified that such a reduction could require customers other than the long distance carriers to pay all of the joint and common costs of the network and therefore should be rejected. The logic of that analysis commends it.[10]

The decision of the Commonwealth Court on this point in the Global Appeal Order is illuminating. The Commonwealth Court decided:

> One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost, but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support. The record here confirms the soundness of the

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[8] *Citing*, Smith v. Illinois Bell Telephone, 282 U.S. 133, 51 S.Ct. 65, 75 L.Ed. 255 (1930) and In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98 at paras. 67, 68 (Aug. 8, 1996) and In the Matter of NYNEX Telephone Companies' Petition for Waiver, 10 FCC Rcd 7445 at para. 39 (May 4, 1995).

[9] In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, CC Docket No. 01-338 (rel. Aug. 21, 2003) at para. 258.

[10] Global Appeal Order at 479.

> PUC's view, based on evidence from consumer witnesses, that users of all services, including access, should share in the payment of total network costs, with the cost of the local loop included as an element of that total network.[11]

Thus, it is clear that the Commonwealth Court has ruled that it is entirely appropriate that access services should contribute to the cost of the loop. Loop facility costs must be allocated to all services, like access service, that employ the local loop facility. That is the law as explained by the Commonwealth Court.

The OCA further notes that what the IXCs seek to do in this proceeding could potentially raise basic local rates significantly. Yet, the IXCs attempt to downplay such increases. Under the Verizon/OCA Joint Settlement, residential customers already will be bearing rate increase of about $1 per month, with all the benefit of those increases being reflected in corresponding decreases in access charges. There is no justification for mandating even further revenue neutral rate rebalancing at this time.

Qwest's Exceptions are particularly overstated as they claim "Pennsylvania consumers will never truly enjoy vigorous local or long distance competition until the implicit subsidies in Verizon's intrastate access charges are made explicit through reducing the charges to parity with interstate rates." Qwest Exc. at 3. Yet, however, Qwest does not want to be directed to flow-through any resulting reductions of intrastate access charges to end user customers and opposes any mandate that would require them to do as such. Qwest Exc. at 15. Furthermore, Qwest has never agreed in its incumbent states to reduce the access charges it imposes on IXCs there to the levels it recommends here. Tr. 382, 385-386. Qwest's claim in this proceeding that its position is intended to benefit Pennsylvania consumers is without merit and should be rejected. As the OCA noted in its Reply Brief, raising basic local service rates substantially so

[11] Id. at 480.

that other rates may *possibly* be lowered is not "good for consumers." OCA R.B. at 17. Rather, it would be better for consumers to avoid all of the local rate increase and not just *possibly* get back a portion of the increase if the IXCs seek to do so by reducing their rates. Id.

It is untenable that the IXCs would assert that they should bear no responsibility for the recovery of any shared network costs. Clearly, the IXCs sell their services over the Verizon network. It is no more acceptable for the IXCs to make no contribution toward such network costs, than it is for a trucking company to pay nothing for the highways that it uses. The IXCs' offer and insistence – that they must pay no more than the incremental cost of access - is the equivalent of a perennial traveling companion chipping in only for gas money. Every driver knows that gas money does not pay for the car as there are also monthly payments, maintenance, and insurance expense to pay. Paying only the incremental costs of access makes no contribution to the network that the IXCs depend upon.

As such, the interexchange carriers are incorrect to argue that they have no obligation to support the common line costs of the local loop. The Exceptions filed by the IXCs, which argue that the Recommended Decision should be rejected because it does not reduce access rates to incremental cost, are without merit and should be dismissed. Rather, the Verizon/OCA Joint Settlement should be adopted as ALJ Fordham recommends because it is in the public interest and represents a reasonable compromise of the issues in this proceeding.

OCA Reply Exception No. 2 - No Mandate For Further Access Reductions Or Basic Rate Increases Should Be Made At This Time. MCI Exception No. 2; AT&T Exception No. 1; and Qwest Exception No. 2.

Each of the three IXCs excepted to ALJ Fordham's Recommended Decision because it did not go far enough in reducing access rates or otherwise recommend a specific means for further access charge reductions. In particular, MCI argues that the ALJ erred by refusing to establish a timeframe to bring access rates to cost. MCI Exc. at 6-9. AT&T's lone exception is that "the ALJ erred in recommending that further access reform be deferred until a future proceeding" without providing a vehicle for those reductions now. AT&T Exc. at 4. Qwest argued that the Commission should "establish a clear timetable in which to phase in the appropriate level of reductions." Qwest Exc. at 15. However, as discussed above, the Verizon/OCA Joint Settlement satisfies the goals and objectives of this proceeding as articulated in the Global Order and the Merger Order. The OCA opposes any commitment to further reduce access charges and increase basic rates at this time.

ALJ Fordham has recommended that: "the Commission should review the impact of the current reductions and reduce costs in subsequent proceedings if necessary." R.D. at 59. However, the IXCs advocate that the Commission should commit to further access reductions at this time – primarily in order to reduce Verizon access charges to the interstate level. The OCA's primary concern is that such dramatically larger increases in access reductions will result in much larger increases in basic local service rates. The OCA has agreed to the local rate increases contained within the Joint Settlement, but opposes any further commitment in access reductions at this time. As discussed above, any further reduction in access charges that results in an increase to basic local service rates is not justified at this time and should be rejected.

Particularly, the OCA opposes the type of broad commitment to mirroring the access rates set by the FCC that the IXCs suggest. MCI Exc. at 9; AT&T Exc. at 5; Qwest Exc. at 7, 8-12. As the IXCs note, the FCC is likely to further revise the interstate access rates in the near future. The OCA opposes any blind commitment to mirroring such rates given the likelihood that they will further change. The policies and determinations made in order to set interstate access rates should not necessarily apply to setting intrastate access rates in Pennsylvania.

Considering the present uncertainty at the federal level, the Commission should simply approve the Joint Settlement and consider its options to further reduce access rates at a future time. It is not appropriate to commit to further access reductions in the current proceeding and the wiser course would be to wait until it is clearer what ramifications further access reductions will have upon consumers.

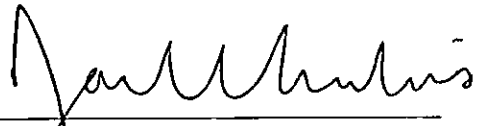
As such, no commitment to further reduce access charges should be made at this time. The Exceptions filed by MCI, AT&T and Qwest which argue that the Recommended Decision should be rejected because it does not specifically provide for such future reductions are without merit and should be dismissed. Rather, the Verizon/OCA Joint Settlement should be adopted as ALJ Fordham recommends because it is in the public interest and represents a reasonable compromise of the issues in this case.

IV. CONCLUSION

WHEREFORE, the Pennsylvania Office of Consumer Advocate respectfully submits these Reply Exceptions in response to the Exceptions filed on December 8, 2003 by MCI WorldCom Network Services, Inc., AT&T Communications of Pennsylvania and Qwest Communications Corporation to the Recommended Decision of Administrative Law Judge

Cynthia Williams Fordham dated November 18, 2003. In particular, the OCA submits that the Exceptions are without merit and should be rejected. Rather, the Recommended Decision should be adopted and the Verizon/OCA Joint Settlement be approved as being in the public interest and a reasonable compromise of the issues in this case.

Respectfully submitted,



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Dated: December 18, 2003
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CERTIFICATE OF SERVICE

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc.,
Docket No. C-20027195

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 18th day of December, 2003.

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DOCUMENT FOLDER

Re: AT&T Communications of Pennsylvania, LLC
v. Verizon North Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find the original and nine copies of the Reply Exceptions of Verizon Pennsylvania Inc. and Verizon North Inc. in reference to the above-captioned matter. [Please note that the Reply Exceptions contains proprietary information, and that an Expurgated copy of the Reply Exceptions also is enclosed.]

PUBLIC VERSION

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Suzan D. Paiva /SDB

Suzan DeBusk Paiva

SDP/slb
Enc.

Via E-Mail and UPS Overnight Delivery
cc: The Honorable Cynthia W. Fordham
Cheryl Walker Davis, Office of Special Assistants
Attached Certificate of Service

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PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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CERTIFICATE OF SERVICE

I, Suzan DeBusk Paiva, hereby certify that I have this day served a copy of the Reply Exceptions of Verizon Pennsylvania Inc. and Verizon North Inc., upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 18th day of December, 2003.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC

v. **Docket No. C-20027195**

VERIZON NORTH INC.

REPLY EXCEPTIONS OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC.

EXPURGATED VERSION

PUBLIC VERSION

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Pennsylvania Inc. and
Verizon North Inc.

Date: December 18, 2003

TABLE OF CONTENTS

INTRODUCTION

Following the Commission's approval several years ago of the parent-level merger that united Verizon North Inc. and Verizon Pennsylvania Inc. (collectively "Verizon") under common ownership, the Commission must now decide how best to implement the merger condition to set "statewide access rates" for the two companies,[1] and also to respond to a complaint by AT&T of Pennsylvania, LLC ("AT&T") seeking to reduce Verizon North's higher access rates to match the level of Verizon PA's.[2]

The Recommended Decision ("RD") approves a Joint Proposal made by Verizon and the Office of Consumer Advocate ("OCA") that achieves both goals and leaves the two Verizon companies with the lowest carrier access charges in the state.[3] The proposal is based on a framework virtually identical to that which the Commission approved as the basis for access rate restructuring for all of the other ILECs in Pennsylvania, based on finding it to be in the public interest and consistent with the Commission's objectives.[4]

All parties except for the Office of Small Business Advocate ("OSBA") agree that this Commission should adopt the first portion of the RD, which approves of the Verizon/OCA proposal. The RD recommends that Commission rebalance Verizon's rates by adopting uniform access rates and rate structures for the two Verizon companies and substantially reducing Verizon North's carrier charge of $8.64 per line per month to equal Verizon PA's carrier charge of $0.63. While the revenue that inter-exchange carriers ("IXCs") pay to Verizon North through access rates

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1 *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIS 86 (Opinion and Order entered November 4, 1999) ("*Merger Approval Order*").

2 The Commission consolidated AT&T's complaint with Verizon's merger filing. *See Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Order entered May 5, 2003).

3 Where the Verizon IXC carrier charge would be $0.63, the lowest carrier charge planned after implementation of the Sprint/RTCC Settlement is $1.22. Tr. 399.

4 *Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596 (Opinion and Order entered July 15, 2003) ("*Sprint/RTCC Settlement Approval Order*").

would decrease by over $50 million per year, the impact of the revenue neutral offset to end users is minimized by spreading the recovery over the end-user lines of *both* Verizon companies, so that the increase to basic residential local rates would be less than $1 per month per residential line, and the increase to weighted average business rates would also be less than $1.

Neither Verizon, OCA nor OTS have filed Exceptions to the RD. The three IXC parties – while excepting to the part of the decision regarding how future access reductions might be considered – also clearly support approval of the OCA/Verizon proposal. AT&T states that the settlement is a "significant step in the right direction," and "respectfully urges that the Commission adopt that proposal." (AT&T Exceptions at 5). Qwest states that the RD "correctly initiates reductions in Verizon's intrastate access charges in a revenue-neutral manner," that "[t]he record clearly supports" the proposal and that it will "benefit all Pennsylvania consumers." (Qwest Exceptions at 2-3). MCI states that the OCA/Verizon proposal "can be viewed as a first start." (MCI Exceptions at 1).

The only opponent of the RD's acceptance of the OCA/Verizon proposal is the OSBA, which opposes ***any*** increase to the rates of business customers – even the quite modest increases proposed here (which even by OSBA's estimate would still be less per line than the average business increase that OSBA actively supported – and which the Commission granted – for the other Pennsylvania ILECs). While OSBA attempts to portray the RD as allowing undefined and open-ended business increases, actually the record regarding the increase in business rates is quite specific and those increases are modest and limited. OSBA also continues to press its general opposition to any access rate rebalancing, based on an outdated "allocation of the local loop" theory. These positions are contrary to all of the Commission's recent holdings on rate rebalancing and access pricing and simply are not reasonable in today's competitive environment. OSBA's Exceptions should be denied.

While agreeing to adoption of the OCA/Verizon proposal as a "first step," the IXCs except to the portion of the RD that recommends that this proceeding be closed at this point. (RD at 59). The RD reached the correct conclusion on this issue. While the Commission need not pronounce this case to be "the final word on access reform,"[5] it should not commit itself ***now*** to a precise schedule of future access reductions and basic rate increases, as the IXCs suggest, but should instead allow itself the opportunity to evaluate the effects on the market of this substantial access reduction, along with the reductions approved in the Sprint/RTCC Settlement and other developments pending before the Legislature and the FCC. It then can consider whether any future proceedings are warranted to evaluate further rebalancing of end user and access rates for the Verizon companies.

The IXCs' demand for a schedule of future reductions is based on their erroneous notion that the Commission's goal for access pricing should be to mirror interstate rates or to set rates at "cost," but this Commission has never held that access should be priced at cost, thereby absolving IXCs of ***any*** contribution to the costs of providing local service. The Commonwealth Court has specifically upheld the Commission's discretion to price access above cost. While the Commission may want to take a step now to reduce the IXCs' contribution, and bring both access rates and basic service rates closer to their cost, this Commission must determine where to draw the line to best serve the public interest, a decision that should be guided in part by the need to protect universal service and avoid rate shock to consumers. The record in this case demonstrates that a pre-ordained schedule of future access reductions is not warranted at this time. The RD was correct in recommending that this proceeding be closed and the issue of future access reductions left to another proceeding and another day. The Commission should therefore adopt ALJ Fordham's RD in its entirety.

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[5] *See Sprint/RTCC Settlement Approval Order*, at 12.

REPLIES TO EXCEPTIONS

I. Replies to OSBA Exceptions

Reply to OSBA Exception 1: The RD is Supported by Substantial Evidence

OSBA makes the rather vague complaint that the RD's approval of the OCA/Verizon proposal is not supported by substantial evidence. As the Commonwealth Court recognized in reviewing this Commission's access pricing decision from the *Global Order*, the Commission has broad discretion in rebalancing rates to reduce access charges, and is neither required to reduce those rates to "cost" nor prohibited from shifting their implicit subsidies to other rate sources:

> One of the lessons of this proceeding is that the cost of excessively priced elements must be reduced to a point nearer to actual incremental cost, but not so greatly as to eliminate the support such revenue provides to other areas of the system that need that support.[6]

Under the Commonwealth Court's interpretation of the law, this Commission is fully within its discretion to approve the RD. The OCA/Verizon Joint Proposal fully satisfies the requirements of the *Merger Order* to produce access rate parity in a revenue-neutral manner, and provides the relief demanded by AT&T in the complaint under which this proceeding has been docketed. There is substantial detail in the record regarding the individual access rate elements and the revenue that would need to be recovered through rate rebalancing from the proposed reductions.[7] The record also contains the details as to the number of residence lines and business lines that would be subject to the rate increase under the proposal.[8] There is also record evidence regarding Verizon's cost of providing access and its cost of providing basic service.[9] Indeed, the specific rate rebalancing that OCA and Verizon propose is within the range of options explained in detail in Verizon's direct testimony. The RD is therefore unquestionably "supported by substantial evidence."

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[6] *Bell Atlantic-Pennsylvania, Inc. v. Pennsylvania Public Utility Commission*, 763 A.2d 440, 480 (Pa. Commw. 2000).

[7] See VZ St. 1.0, Exhibits MJW-1 through MJW-4.

[8] See AT&T Cr. Ex. 5 and 6.

[9] VZ St. 2.0 (Dean/Sanford Direct); VZ St. 2.1 (Dean/Sanford Surrebuttal).

OSBA argues that the Commission should reject the RD because it does not provide sufficient detail as to the proposed increases to business customers. This argument is baseless. The OSBA ignores the substantial detail that the record contains regarding the business increases that would occur with implementation of the OCA/Verizon proposal approved by the RD. Ms. Berry testified that the increase to weighted average business rates would be less than 60 cents per line per month, and that the total revenue to be collected from business customers from this increase would be **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]**.[10] This means that less than 30% of the total revenue will be recovered through business rate increases and the majority of the revenue is being recovered from residential customers. The record also indicates that presently approximately 773,000 business lines that are priced at the basic tariffed dial tone line rates would be subject to the increase.[11]

In connection with its active support of the Sprint/RTCC Settlement, OSBA advocated access reductions offset by business increases for the other ILECS that were larger in magnitude and based on far less detail than is present in the record here. The average projected increase to weighted average B-1 rates (i.e., comparable to the less than 60 cents here) under the approved Sprint/RTCC settlement was $2.01, and the largest projected increase to weighted average business rates was $4.83 per line per month.[12] The record before the Commission for the Sprint/RTCC settlement indicated only that the increase to basic business rates would not exceed the increase to basic residential rates and that the increases would be done in steps with limits to each step.[13] Even the more specific detail provided to the parties to that case provided less information than the detail

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[10] Tr. 59, 135 (indicating that the necessary increase to weighted average business rates would be less than 60 cents, although of course any individual customer's rates might by more or less than the average.)

[11] AT&T Cr. Ex. 6.

[12] VZ St. 1.1, DMB Exhibit 2

[13] *Sprint/RTCC Approval Order*, Attachment A.

that Verizon has provided in the record to the Commission here.[14] It is perplexing for the OSBA to have actively advocated a settlement with higher business increases and less detail in connection with the rate rebalancing for all the other ILECs and then to oppose the RD's recommendation of a substantially lower weighted average increase for Verizon's business customers for the same purpose and on virtually the same terms.

OSBA's primary complaint seems to be that the ALJ makes "no acknowledgement of the maximum amount to be borne by business customers." (OSBA Exception at 7). The record, however, ***does*** contain a "maximum" limit for business customers. Verizon's original filing states that Verizon "may, at its sole option, increase its weighted average Business line rate by up to the same amount on a dollar basis that its weighted average R-1 rate is increased, but in no event may the B-1 rate be less than the R-1 rate,"[15] and Verizon has stated that this rebalancing will satisfy that condition.[16] This is precisely the same restriction contained in the Sprint/RTCC settlement, which the Commission approved. Therefore, contrary to OSBA's dire predictions, the settlement does not leave Verizon the option of placing the entire increase, or even a substantial portion of the revenue, on business customers. While OSBA claims that the proposal could be read to allow Verizon to collect less than $40 million from residential customers, moreover, the record is clear that Verizon intends to impose about $1 per month, per line on residential customers, which is estimated to collect $40 million.[17]

OSBA also complains in its introduction about the fact that Verizon proposes to spread the revenue lost from reduction of Verizon North's access rates as revenue neutral increases across the end user lines of both companies, although it is not clear if this is actually the basis for one of

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[14] *See* VZ St. 1.1, DMB Exhibit 2; Tr. 161.

[15] VZ Ex. 1 (Access Proposal) at Elements of Proposal 2(e) and 3(e).

[16] VZ Main Brief at 19.

[17] VZ St. 1.1, DMB 1; AT&T Cr. Ex. 5.

OSBA's exceptions. (OSBA Exceptions at 4). If Verizon did not do so, the increases to basic local rates in Verizon North would have to be much greater to support the same level of access reductions (since the access revenues are being removed from Verizon North).[18] The opportunity to reduce access rates with minimal increases to end-user rates is another potential merger benefit to the Verizon North customers.[19]

The OSBA's complaints ignore the unique history of this case. This is not an ordinary rate request proceeding. Here, the Commission ***asked*** Verizon to make a proposal to achieve statewide access rates for the two companies; and specifically instructed that any revenue reductions could be proposed on a revenue neutral basis. In fact, it must have been the intent of the *Merger Order* that the scale and scope of Verizon PA could be used to make access reductions possible for Verizon North. Otherwise, if Verizon North were required to pay for its access reductions totally within itself, there would have been no reason to tie Verizon North's reductions to the merger. Rather, Verizon North should have been part of the RTCC settlement and allowed to provide a more gradual reduction of access rates through revenue neutral access reductions along with all of those similarly situated companies.[20]

Reply to OSBA Exception 2: The RD Is Not Discriminatory To Business Customers

OSBA's second Exception complains that "under the VZ/OCA proposal, VZ-contracting business customers will not realize increases to their local exchange service rates." (OSBA

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[18] Simple mathematics shows that Verizon North would not be able to reduce its access rates to the same extent proposed here if it must keep the revenue neutral offsets within itself. Simply to recover the **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** in revenue under the Verizon/OCA proposal spread only across the 500,000 residential lines of Verizon North would cost over $9.00 per line. Spreading the costs across a larger base of customers, as Verizon has proposed, will mean much smaller increases for each affected customer.

[19] Indeed, the residents of Verizon North's territory have already reaped ample other benefits from the merger. See VZ St. 1.0 (Berry/Wirl Direct) at 19, n. 10.

[20] This result of spreading the cost of Verizon North's access reductions across the lines of Verizon PA is similar in concept to the Universal Service Fund, in which Verizon PA (and its customers and shareholders) pay for the access reductions of all of the other ILECs in Pennsylvania. If the Commission has the authority to create the Universal Service Fund, it certainly has the authority to approve Verizon's alignment and rebalancing proposal.

Exceptions at 10). OSBA cites no Commission precedent that requires a rate rebalancing to place part of the increase on "contracting" customers – and indeed to do so makes no sense. The rates that are being increased here are Verizon's tariffed rates for basic business service, and Verizon has provided an estimate of the number of lines that pay the tariffed rates and would therefore be subject to the increase. By definition, customers with contract and package lines pay their contractual rate, not the basic dial tone line rate. The proposal here is no different from the RTCC Settlement and other Commission-approved Chapter 30 rate rebalancings in this regard.

Indeed, the OSBA actively supported the Sprint/RTCC settlement in which there were no limits on whether the business increases would be placed only on non-contracting parties or whether any particular business customer's increase could be higher than the average. The Commission allowed those ILECs complete flexibility, including the option to place their business increases only on non-contracting parties, and the OCA/Verizon proposal approved by the RD contains the same flexibility.

Reply to OSBA Exception 3: It is Not Improper To View The Verizon/OCA Proposal as a "Partial Settlement"

OSBA's third Exception inexplicably complains that the proposal recommended by the RD "falls short of the bar of a non-unanimous settlement." (OSBA Exceptions at 12). This complaint makes little sense because the RD was based on a full record, including prefiled testimony, live hearings with the right of cross examination and two rounds of briefing, and OSBA's counsel specifically cross-examined Verizon's witnesses about the details of the OCA/Verizon proposal.[21] Moreover, as discussed in response to OSBA Exception 1, the OCA/Verizon proposal is within the range of options Verizon described in detail in its direct testimony and there is ample record evidence to support the RD's conclusion.

[21] Tr. At 142.

Reply to OSBA Exception 4: The Verizon/OCA Proposal Complies With Statute And Commission Precedent

OSBA's fourth Exception contends that the rate rebalancing approved by the RD is improper because Verizon did not "allocate" the costs of the local loop between local rates and access rates, but rather presumed that 100% of the cost of the local loop should be recouped in the rates for basic local service. (OSBA Exceptions at 13).

The proposal approved by the RD to raise basic residential rates by less than $1.00 does not even come close to allocating "100% of the cost of the local loop" to basic service. Indeed, there is no dispute that under the OCA/Verizon proposal, access rates would still remain above anyone's version of access costs, and therefore IXCs would still be providing some contribution to network costs. As Verizon demonstrated in the table on page 27 of its Main Brief, even if one artificially reduced dial tone line costs by using any of the allocation percentages suggested in the record, Verizon's local service rates would still remain below their allocated portion of cost. This is true both under Verizon's cost study and using the improperly understated costs posited by the public advocates. In fact, OSBA's witness, Mr. Buckalew admitted in the record that the Commission may allocate loop costs "any way it decides is reasonable," which presumably would include allocating 100% to local service. OSBA St. 1.0 (Buckalew Rebuttal) at 12.

Further, OSBA fails to recognize that this Commission has moved beyond the outdated theory of price regulation that artificially depressed basic local service rates by "allocating" substantial portions of network costs to other services, such as access. Instead, the Commission's current view on these pricing issues is exemplified by the 1998 Recommended Decision of Judge Schnierle in the generic access investigation, where he concluded that "while a case might be made to allocate a ***small*** portion of the loop to access," a policy allocating a substantial portion of loop costs to anything other than basic service "simply fails to recognize the reality 'on the ground,' and

is doomed to failure in a competitive environment."[22] The Commission in the *Global Order* "incorporate[d] . . . by reference" Judge Schnierle's "various conclusions regarding the necessity of access reform in a competitive environment."[23] Both in the *Global Order* and in subsequent orders (most recently in its recent Order adopting the RTCC access settlement which is the model for Verizon's proposal) the Commission has indicated that it intends to move access charges closer to cost — a cost which does not include allocation of loop costs. Moreover, in testimony filed in prior cases the OSBA has taken the precise opposite position on the "loop as a joint cost" theory.[24]

That this Commission is following Judge Schnierle's recommendation to reduce the contribution provided by access, and to raise basic rates as a replacement for these "implicit subsidies," is evident from the numerous Chapter 30 rate rebalancings the Commission has approved over the years and from its approval of the Sprint/RTCC Settlement.[25] Indeed, the OSBA glosses over the fact that this Commission has been steadily reducing the contribution provided by access, so that Verizon PA's carrier charge today is only a fraction of the carrier charge that would exist if the Commission were in fact using the allocation percentages that were suggested in the record. OSBA argued that the Commission should be allocating 25% of loop costs to access, which would require a carrier charge many multiples higher than Verizon PA's current $0.63.[26] As the Commonwealth Court recognized in response to this Commission's own arguments, the Commission has discretion to determine where to place the "cost burdens."[27]

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[22] *Generic Investigation of Intrastate Access Charge Reform*, Docket No. I-00960066 (Recommended Decision, June 30, 1998) ("*1998 Access Recommended Decision*") at 51-52.

[23] *Joint Petition of Nextlink Pennsylvania, Inc.*, No. P-00991648-1649 (Opinion and Order entered September 30, 1999) ("*Global Order*") at 27.

[24] VZ Cr. Ex. 10.

[25] See VZ St. 1.1 (Berry/Wirl Surrebuttal) at 10.

[26] OSBA St. 1 (Buckalew Rebuttal) at 12.

[27] 763 A.2d at 480.

OSBA also argues that 66 Pa.C.S. § 1325 precludes the Commission from approving this rate rebalancing because Verizon did not demonstrate cost justification for raising basic rates more than the overall increase to Verizon's revenue (which is 0 since this rebalancing would be revenue neutral). (OSBA Exceptions at 14). This argument fails for several reasons.

First, it would be reasonable for the Commission to reverse its 1996 holding in the rate rebalancing case and to conclude that § 1325 was not intended to apply to revenue neutral rate rebalancings under Chapter 30 at all. (VZ Main Brief at 22-23). In light of the numerous rate rebalancing decisions previously adopted by the Commission, this is a rational conclusion.

Second, even if the statute applies, the "direct cost of providing the service," which the statute states must be included in the cost for this analysis, logically must include 100% of the cost of the dial tone line facility, because this facility is essential to provide local service. (VZ Main Brief at 25).

Third, even if one assumed that the statute required the comparison to use less than 100% of dial tone line costs, Verizon's weighted average rate for residence basic local service of $12.55 for Verizon North and $13.31 is still substantially less than the cost under any of the allocation scenarios posited by the advocates in this case, and the minimal $1 increase proposed here would still be amply "justified" in light of the "cost." (VZ Main Brief at 23-27).[28]

Fourth, this Commission has approved numerous other ILEC rate rebalancing plans without discussing or requiring a showing on §1325, and it would be arbitrary and capricious to apply the statute to Verizon in a manner different from the way it has been applied to all other ILECs.[29]

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[28] Verizon's cost studies demonstrated that Verizon's cost of providing the residential dial tone line facility (loop and port) is **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]**. VZ St. 2.0 (Dean/Sanford Direct) at 20.

[29] *See, e.g.*, OCA Cr. Ex. 7 (including Statement of Commissioner Rolka).

Reply to OSBA Exception 5: The Commission's Approval Of The RTCC/Sprint Settlement Is Instructive Precedent Here

OSBA's final Exceptions contends that the RD should not have compared the terms of the OCA/Verizon proposal to the Commission's recent order approving precisely the same proposal for all of the other ILECs in Pennsylvania through the Sprint/RTCC Settlement. (OSBA Exceptions at 16). OSBA relies on the arguments made in its Briefs, where it admitted that Verizon's petition "proposed access charge reductions similar in methodology to those presented by RTCC/Sprint in their settlement proposal," (OSBA Main Brief at 3), but then never explained why OSBA actively supported the Sprint/RTCC settlement – which is projected to result in hefty business rate increases for many customers – but continues to oppose OCA/Verizon's moderate proposal here.[30]

All of the same protections and limits that the public advocates asked for and found acceptable for the RTCC Settlement are also proposed to be included in the OCA/Verizon settlement. As Verizon demonstrated in its Main Brief, the OCA/Verizon proposal contains the identical language to the Sprint/RTCC Settlement regarding the option to raise business rates. (Verizon Main Brief at 19). Verizon North – which is the subject of the access reductions –is not very different in size and density from some members of the rural coalition whose settlement the OSBA actively supported.[31] It is also of note that Verizon could implement the $1 increase required by the OCA/Verizon Joint Proposal and its resulting average R-1 rates ***would still be less than Sprint's current weighted average R-1 rates,*** much less the $18 average rate Sprint will achieve after it makes the rate increases authorized by the Sprint/RTCC settlement.[32] Sprint's NECA loop costs, moreover, do not differ appreciably from Verizon North's, but the RTCC settlement will

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[30] Alltel, for example, plans to increase its weighted average business rates by a total of **[BEGIN RTCC PROPRIETARY]** **[END RTCC PROPRIETARY]** North Pittsburgh similarly plans to increase its weighted average business rates by a total of **[BEGIN RTCC PROPRIETARY]** . . **[END RTCC PROPRIETARY]** The average Sprint/RTCC business increase is **[BEGIN RTCC PROPRIETARY]** **[END RTCC PROPRIETARY]**

[31] See VZ St 1.0 (Berry/Wirl Direct) at 23-24.

[32] See DMB Exhibit 2 to VZ St. 1.1.

leave Sprint with residential rates almost $4.50 higher than Verizon North's, plus a $7.62 carrier charge. Sprint's weighted average B-1 rate would be raised to $31.32.[33] It simply makes no sense for the OSBA to actively support allowing Sprint to increase its rates, and oppose OCA/Verizon's much more modest revenue neutral proposal. As it approved the Sprint/RTCC Settlement as being in the public interest, the Commission should approve the OCA/Verizon proposal here.

II. Replies to AT&T, MCI and Qwest Exceptions

Reply to AT&T Exception 1, MCI Exception 2, Qwest Exception 1: The RD Did Not Err In Recommending That Further Accesss Reform Be Deferred Until A Future Proceeding

While AT&T pronounces itself satisfied for the time being with the access reductions that would result from the RD, it also asks the Commission to reject the second part of the RD that closes this proceeding and instead to commit itself now to specific access reductions and offsetting rate increases over a two-year period, to get to the point where Verizon's intrastate access rates mirror its current interstate rates. AT&T projects that these two steps would further reduce Verizon's access revenue by **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** beyond the reductions that would result from the OCA/Verizon proposal, and that two end-user rate increases of about 80 cents per month would be required beyond the increases that would result from acceptance of the RD. (AT&T Exceptions at 5). Similarly, Qwest and MCI except to the RD's decision to close the case after approval of the OCA/Verizon proposal.

The RD was correct in recommending that the Commission should not commit itself in advance to precise access reductions and end-user rate increases as AT&T proposes. Rather, the Commission should approve this portion of the RD and close this proceeding now, by adopting the

[33] See DMB Exhibit 2 to VZ St. 1.1.

OCA/Verizon Joint Proposal, with the same understanding expressed in the Sprint/RTCC Settlement Approval Order that this proceeding may not be the "final word on access reform."[34]

First, AT&T's proposal presumes that this Commission has already found that the end goal is to arrive at access rates that mirror current interstate rates, but the record here does not support such a finding, as discussed in response to the IXC's other Exceptions below. Indeed, the Commonwealth Court has already held that it would be reasonable and within this Commission's discretion to end up with access rates priced above cost, requiring IXCs to continue to share in some portion of network costs.[35] The Commission need not determine the appropriate end point, or decide whether access rates should ultimately be set at cost, if it simply approves the RD and ends this proceeding now.

Second, all the arguments the IXCs make for access reductions are based on their (incorrect) notions about the impact of the current level of access rates on the markets for intrastate toll services and bundled offerings.[36] The Commission should give itself the chance to implement the significant access reductions contemplated by the OCA/Verizon proposal, as well as the access reductions that will flow from the Sprint/RTCC Order, and evaluate the state of the market after those reductions have been implemented. The Commission should not be put in the position of pre-ordaining future access reductions without the benefit of evaluating that evidence.

Third, AT&T implies that an additional **[BEGIN VERIZON PROPRIETARY]** . . **[END VERIZON PROPRIETARY]** access revenue reduction over two years will satisfy the IXCs, and that the Commission would achieve "final access reform" with respect to Verizon's access rates. (AT&T Exceptions at 6). Verizon suspects that this is not the case, and that the IXCs will continue to demand reductions even after AT&T's two phases, because they have already

[34] *Sprint/RTCC Settlement Approval Order* at 12.

[35] 763 A.2d at 480.

[36] *See* VZ Main Brief at 37-44; Reply Brief at Section IV (A).

stated that current interstate rates exceed their notion of "cost."[37] Therefore, the Commission will not avoid a future proceeding by now adopting AT&T's request to set a schedule for future access reductions.

Therefore, the Commission should accept the RD's recommendation and close this proceeding with its adoption of the OCA/Verizon proposal, finding that this is an appropriate "next step" and that the Commission may again address issues of Verizon's access pricing in future proceedings.

Reply to MCI Exceptions 1 and 4: The RD Did Not Err By Refusing To Bring Access Rates To "Cost"

The underlying premise of the IXCs argument that the RD erred in refusing to set a schedule of future access reductions is that access rates must be reduced to "cost," a demand that is flawed on many levels and should be rejected. MCI overtly makes this argument in its Exceptions 1 and 4. While the Commission has stated the goal of ***reducing*** implicit subsidies in access rates (a goal that the RD accomplishes), the Commission has stopped short of declaring that access should be priced at "cost" and that IXCs should therefore be absolved of ***any*** contribution to local service. It should not reach that issue here.

As noted above, the Commonwealth Court approved this Commission's decision in the *Global Order* to continue to price access above its cost as a sound exercise of the Commission's specialized expertise in this area.[38] The Commonwealth Court opinion is instructive because it rejects the false premise of all of the IXC arguments here – the erroneous contention that the Commission is somehow bound to arrive at "cost based" access rates. The Court emphasized that it

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[37] *See, e.g.,* AT&T Main Brief at 6 ("Verizon's interstate rates are themselves priced at levels that exceed the incremental cost Verizon incurs in providing access services."). Moreover, the IXCs believe that interstate access rates will continue to fall, so there is no reason to assume that two years from now the rates that result from AT&T's proposal will actually "mirror" the interstate rates in effect at that time. *See* Qwest Main Brief at 20 (contending that "the FCC appears to continue moving in a direction that significantly reduces interstate switched access rates.")

[38] *Id.* (emphasis added).

would be reasonable for the Commission ultimately to conclude that access rates should never be reduced to "cost," and that the Commission's goal is to determine, in the exercise of its sound discretion, where to draw the line so that access is providing neither too little nor too much support to network costs.[39]

The IXCs have not demonstrated any reason for the Commission to reduce rates beyond the level that would result from the RD, nor is there any basis to pre-ordain substantial further reductions at this point. Today's carrier access rates include contribution—that is, exceed incremental and shared fixed cost— to provide a means for recovery of fixed common costs and recovery of costs associated with the public utility franchise obligations of local exchange carriers such as Verizon. These obligations include providing basic residential exchange service at rates that are frequently below the cost to serve certain areas and deploying facilities ubiquitously in order to serve as carriers of last resort. Those obligations impose unique costs on Verizon and other ILECs, costs that are increasingly difficult to bear in the face of extensive competition. Carrier access charges should continue to help defray these costs to the extent possible in an increasingly competitive market.[40] The Commission should keep in mind, moreover, that Verizon PA's access rates are already the lowest in the state, and that the OCA/Verizon Joint Proposal allows for an additional **[BEGIN VERIZON PROPRIETARY] [END VERIZON PROPRIETARY]** per year in savings to the IXCs to bring Verizon North's rates in line with Verizon PA's. The IXCs' Exceptions demonstrate that they will never be satisfied, and the Commission need not cater to their extreme demands.[41]

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[39] *Id.*

[40] VZ St. 1.0 (Berry/Wirl Direct) at 29; VZ St. 3.0 (Taylor Surrebuttall) at 30.

[41] While AT&T and MCI demand that Verizon be required to reduce its intrastate access rates to cost, the record shows that they do not price their ***own*** intrastate access rates according to the extremely low standard they seek to impose upon Verizon. MCI's intrastate originating and terminating access rate per minute is nearly ***4 cents a minute*** – more than twice as high as Verizon PA's current per minute rate of **[BEGIN VERIZON PROPRIETARY]** . . **[END VERIZON PROPRIETARY]**.Tr. 358; VZ Cr. Ex 9. AT&T's composite per minute intrastate access rate is 1.68 cents per minute for its "AT&T Digital link" customers and 1.96 cents per minute for customers of

The IXCs' primary arguments in support of drastic access reductions beyond what was recommended in the RD relate to the impact of intrastate access charges on the market for in-state long distance services. Verizon has responded at great length to all of the IXC's arguments in its Main and Reply Briefs and it incorporates those discussions here.[42]

To summarize, IXCs have gained a significant share of the IntraLATA toll market even with access rates priced as they are today.[43] Despite the IXCs' suggestion that something changed when Verizon PA gained permission to offer long distance service across LATA boundaries, in fact both Verizon PA and Verizon North have been offering in-state long distance service in Pennsylvania, in the form of IntraLATA toll service, since divestiture. Indeed, AT&T's own witness admitted that "the interexchange market is a very, very competitive market."[44] Qwest similarly admits that "fierce competition" among the approximately 500 certificated IXCs in Pennsylvania is bringing the IXCs "average rate per minute down in Pennsylvania year after year."[45]

The Commission was unconvinced by the IXCs' "price squeeze" argument in the Verizon merger case (where it rejected the IXCs' demand for an immediate reduction of access rates to cost as a merger condition), and found that the terms of the Merger and Global orders regarding access charges and imputation were sufficient to allow the merger to proceed as in the public interest.[46] The argument was similarly rejected in the *Global Order*.[47] More recently, the Commission explicitly rejected the price squeeze argument in holding that the non-Verizon ILECs would not be subject to a requirement to "impute" their access charges in their toll rates.[48] Indeed, the "price

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its TCG affiliate. VZ Cr. Ex. 8.

[42] Verizon Main Brief pp. 37-49; Verizon Reply Brief pp. 24-30.

[43] Verizon St. 3.0 (Taylor Surrebuttal) at 42.

[44] Tr. 270.

[45] Qwest Main Brief at 23).

[46] *Merger Approval Order* at 56-57.

[47] *Global Order* at 238-242.

[48] *See, Implementation of the Telecommunications Act of 1996: Imputation Requirements for the Delivery of IntraLATA*

squeeze" makes no sense because Verizon would make more money charging access to the IXCs than charging its end-user customers a price lower than access.[49]

The IXCs complain that wireless carriers have a cost advantage and that slashing intrastate access rates will somehow put the IXCs back on the same footing as wireless carriers. (MCI Exceptions at 13; AT&T Exceptions at 7). This argument is flawed for many reasons. The record shows that the customers of wireless carriers are not dependent on the local telephone network to ***originate*** calls, and thus wireless carriers avoid originating access costs. Not only would this advantage exist for the wireless carriers no matter how high or low Verizon's intrastate access rates were priced, but IXCs can duplicate this advantage by providing their own local service to customers – as MCI and many other carriers already do in Pennsylvania – and thereby avoid originating access, too.[50] While it may be true that more customers are using wireless phones, as Dr. Taylor explained there are many complex reasons for the growth and maturity of the wireless market and its use as a substitute for traditional landline phones, and it is illogical to conclude that intrastate access rates play a significant role.[51]

The implicit premise of the IXCs' argument that access should be priced at "cost" is that end-users will benefit from the extreme reductions in access rates they demand here. The IXCs have not proven that fact, however. To the contrary, this Commission's own holdings and the IXC's admissions on the record demonstrate that toll services to end users are priced based on what the market will bear – not based on the magnitude of any particular ILECs intrastate access charges. For example, AT&T passes through to its end users its own supposed "cost" of paying intrastate access charges to Verizon and the other ILECs in the form of an "In-State Connection Fee" of $1.95

Services by Local Exchange Carriers, No. M-00960799 (Opinion and Order entered January 29, 2002) at 14.

[49] VZ Main Brief at 40-42; Verizon St. 3.0 (Taylor Surrebuttal) at 36

[50] VZ St. 3.0 (Taylor Surrebuttal) at 43.

[51] VZ St. 3.0 (Taylor Surrebuttal) at 43.

per month,[52] which AT&T charges state-wide, so that notwithstanding Verizon PA's comparatively low access rates, end users in Verizon PA compensate AT&T for the substantially higher access rates it pays to the rural ILECs.[53] AT&T's witnesses have essentially stated the intention to price toll (including its connection fee) based on what the market will bear, and have refused to commit to lowering the $1.95 charge even if Verizon lowers its access charges and even based on the prospect of lower access costs from the rural ILECs with implementation of the RTCC settlement.[54] Therefore, AT&T's own admissions show that there is no urgency to lowering Verizon's access rates beyond what is proposed in the OCA/Verizon Joint Proposal.

Reply to Qwest Exception 2: The RD Did Not Err In Refusing To Mirror Interstate Access Rates

Qwest's Exception argues that the RD erred in failing to adopt a schedule of reductions that would have Verizon's intrastate access rates mirror its interstate rates. AT&T similarly argues for a plan to reduce Verizon's "intrastate rates to interstate levels within the next several years." (AT&T Exceptions at 3).

As discussed above, the IXCs have demonstrated no basis on this record or in Commission precedent to reduce access charges beyond the level that would result from implementation of the RD – be that to some notion of "cost" or to mirror interstate rates. Moreover, the IXCs believe that interstate access rates will continue to fall, so there is no reason to assume that two years from now the rates that result from AT&T's proposal will actually "mirror" the interstate rates in effect at that

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[52] VZ Cr. Ex. 1. See also VZ Cr. Ex. 2 (AT&T intrastate tariff imposing In-State Connection Fee); VZ Cr. Ex. (material from AT&T's website demonstrating that its fee varies among states and that Pennsylvania's fee is among the highest).

[53] Tr. 274; 322; 326-27.

[54] Tr. 271-272 (Stating that AT&T will change its fee only if it needs to do so to remain competitive in the market, and in responding to the question "it's possible then that even if Verizon reduces its access charges, AT&T will not reduce its in-state connection fee; correct," AT&T's witness states "[a]nything is possible in a competitive market"). *See also* Tr. 325 (similar response regarding Sprint/RTCC Settlement).

time, suggesting that the IXCs will simply come back for more.[55] Notably, Qwest, which owns the Regional Bell Operating Company formerly known as U.S.West, admitted that it has not mirrored interstate in all of the states in which it operates as an ILEC.[56]

Reply to MCI Exception 3: The RD Did Not Err In Requiring Revenue Neutrality

MCI argues that Verizon should be required to slash access rates – resulting in a huge revenue loss – without being permitted to raise rates elsewhere to offset the reduction. It does so based on the self-serving argument that the Commission should just lower access rates and make Verizon absorb the substantial revenue loss, so that the Commission does not have to worry about the consequences of raising end-user basic rates. (MCI Exceptions at 10-12).

MCI made the exact same argument to Judge Schnierle in the 1998 generic access case, and he found it to be "extreme," "without merit," made simply for MCI's convenience and a violation of Verizon's Chapter 30 Plan.[57] Indeed, while MCI disingenuously opposes revenue neutrality to sidestep the OSBA's arguments against local rate increases, MCI claims to agree with Verizon that the costs of the loop should be "recovered from the cost causer – the end user." (MCI Main Brief at 14). MCI's argument against revenue neutrality would leave Verizon unable to recover its costs of the loop and would jeopardize universal service and Verizon's financial stability.

The Commission contemplated that any access decreases made as a result of the *Merger Order* would be revenue neutral.[58] This is consistent with this Commission's prior treatment of

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[55] *See* Qwest Brief at 20 (contending that "the FCC appears to continue moving in a direction that significantly reduces interstate switched access rates.")

[56] Tr. 382.

[57] *1998 Access Recommended Decision* at 73 ("If the Commission were to order [Verizon PA] (or any other Chapter 30 companies, for that matter) to lower some rates without permitting revenue neutral increases in others, it would frustrate a major purpose of Chapter 30. While such action might be justifiable in an extreme situation, I find no reason to recommend such action as part of an effort to reform access charges.")

[58] *Merger Approval Order* at 36 (noting that Verizon was not precluded "from arguing in this combined proceeding that any additional reductions that the Commission orders should be implemented ***on a revenue neutral basis***") (emphasis added); MOU at paragraph 4 (specifically allowing Verizon to propose "that that any additional reductions which the PUC orders as a result of this new proceeding should be implemented ***on a revenue neutral basis***") (emphasis added).

access reform in *Global Order*, in the numerous Chapter 30 rate rebalancings the Commission has approved over the past few years and in the Commission's approval within the last few months of the Sprint/RTCC settlement – none of which MCI mentions in its Exceptions. In implementing the access reductions required by the *Global Order*, the Commission was careful to preserve revenue neutrality. For example, for Verizon PA, the Commission carefully matched up each access revenue reduction with money available under negative Price Change Opportunities ("PCOs") under Verizon PA's Chapter 30 Plan, which required Verizon PA to reduce non-competitive rates.[59] Instead of reducing basic service rates by the amounts of the PCOs, Verizon PA reduced access rates and kept basic service rates the same. For the other ILECs the Commission made the access changes revenue neutral in different ways, either by (1) transferring revenue to a carrier charge pool to be recovered through the carrier charge, (2) allowing revenue neutral offsets through local rate increases, and/or (3) allowing contribution from the Universal Service Fund. The Commission clearly recognized that transferring revenue out of access would ultimately require off-setting end-user rate increases when it stated that it would pursue "aggressive access reform as long as the resulting access restructure would be conducive to our goal of promoting universal service and ***would not result in rate shock to the local exchange customer.***"[60] The Commission had revenue neutrality in mind when it referred to its future access investigation, stating that "we shall consider the appropriateness of a toll line charge (TLC) to recover any resulting reductions."[61]

Following the *Global Order*, the Commission has approved a number of Chapter 30 rate rebalancing filings for other ILECs in which access rates were reduced and off-set with revenue-neutral increases to basic rates. The Commission has consistently allowed these rate rebalancings to

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[59] *Global Order* at 22-24, 29.

[60] *Global Order* at 37.

[61] *Global Order* at 60.

bring the price of access closer to its "cost," while increasing basic local service rates closer to their cost. Thus, the residential rate increases have ranged from $1.03 to $3.77.[62]

In the July 2003 Sprint/RTCC Order, this Commission continued to recognize that an essential part of access reform is moving the implicit subsidies to explicit charges, stating that "[w]e further look to the Federal Communications Commission's (FCC) recent decisions in the *CALLS* and *MAG* orders for precedence in ordering implicit charges to become explicit, through either an increase in basic local telephone service rates, or through service line charges on customer bills. This enables other carriers to compete due to reduced subsidies."[63]

MCI argues that access rates do not subsidize local rates, but that is directly contrary to the finding in the *Global Order*, which recognized that "[a]ccess charges provide a significant source of ILEC earnings and contain implicit and explicit subsidies for local rates" which "have helped keep basic local exchange service rates in Pennsylvania at an affordable level over the years."[64]

Not only are the rate increases that will result from the RD modest, but, as AT&T and Qwest pointed out in their testimony, there is a benefit to local competition from raising basic service rates to better reflect costs.[65] Judge Schnierle similarly advised the Commission in 1998 that it is necessary to eliminate subsidies and to raise basic service rates closer to their cost in order for all customers to experience significant local competition.[66]

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[62] VZ St. 1.1 (Berry/Wirl Surrebuttal) at 10.

[63] RTCC Settlement Approval Order at 11.

[64] *Global Order* at 11, 13, n. 9.

[65] AT&T St. 1.0 (Kirchberger/Nurse Rebuttal) at 33-34 ("the rate rebalancing proposal in Verizon's petition, if properly applied, could provide a mechanism for bringing local exchange rates in Verizon's service territory more in line with the underlying cost of that service, while at the same time eliminating the inefficiencies and anti-competitive effects of above-cost access charges. As we noted previously, the Commission in fact recognized the competitive benefits of making 'implicit charges explicit' in its Order this week approving the Sprint/RTCC access proposal.") Qwest St. 1.0 (McIntyre Rebuttal) at 11("[r]evenue neutrality insures that companies are not penalized for the progressive restructuring of rates that are in the long term best interests of competition and consumers. This repricing should result in lower long distance rates and should therefore be revenue neutral to consumers as a whole").

[66] 1998 Access Recommended Decision at 68 ("Obviously, one answer to this situation is to permit the ILECs to raise the prices of those services (primarily, residential basic phone service, and business basic service in high cost, i.e., rural areas) that, to now, have been priced below cost, and lower the price of those services (access service and

Since Judge Schnierle's RD was issued, this Commission itself has recognized the tie between rate rebalancing and local competition, noting that "the new competitive market requires telecommunications providers to move their rates closer to the cost of providing service," and approving North Pittsburgh's plan to lower access rates and raise basic service rates because "[t]he instant filing begins the process of eliminating the subsidization of local exchange rates that has been provided by inflated access rates."[67]

The Verizon Chapter 30 plans also require any rate restructurings to be revenue neutral. As the Commission recently noted in approving the identical type of access rate restructuring with the Sprint/RTCC Settlement, the reduction of access rates offset with revenue neutral basic rate increases "essentially provides for each RTCC company to do what is permitted under their respective Chapter 30 Plans, that is, restructure rates on a revenue-neutral basis in a manner that does not increase local rates by more than $3.50 per month."[68] Indeed, the Commission has approved numerous Chapter 30 rate rebalancing filings where basic rate increases offset access reductions.[69] In fact, the Commission has noted that this type of rate rebalancing is completely consistent with the goals of Chapter 30. In approving Denver & Ephrata's Chapter 30 revenue neutral rate rebalancing in which basic local residential rates were raised by $2.50 and business rates by $1.00 to offset access reductions, the Commission held that:

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vertical services) that have been priced well above costs").

[67] *PUC v. North Pittsburgh Telephone Company*, R-00016681 (Opinion and Order entered November 30, 2002) at 7.

[68] *Sprint/RTCC Approval Order* at 10.

[69] VZ St. 1.1 (Berry/Wirl Surrebuttal) at 10.

> D&E is taking steps under its Network Modernization Plan to enhance its network and to provide advanced services to its customers. Part of the quid pro quo under Chapter 30 in exchange for this network modernization commitment is the ability to adjust its rates in the manner proposed in this filing. Adjustments such as these are necessary to ensure that D&E can maintain the financial viability to continue with network modernization while also facing competitive entry. This filing balances the goals of Chapter 30, consistent with the public interest.[70]

The answer is no different under the Verizon Chapter 30 plans, as described in detail on pages 27 through 31 of Verizon's Main Brief. Indeed, Judge Schnierle concluded that the terms of Verizon PA's Chapter 30 Plan require revenue neutrality for access reductions, and that even if the Commission believed it were legally empowered to ignore Verizon PA's Chapter 30 Plan, it would be "unwise to do so" in this instance because requiring Verizon PA (or any other Chapter 30 company) "to lower some rates without permitting revenue neutral increases in others" would "frustrate a major purpose of Chapter 30."[71]

MCI's proposition that the Commission should eliminate virtually all of Verizon's access revenue while requiring it to maintain its current local service rates is contrary to Chapter 30 and would be devastating to the company. In fact, while MCI ignores Verizon North and makes its argument about Verizon PA, the vast majority of the access reductions proposed in the OCA/Verizon Joint Proposal come from Verizon North's revenue (as would be expected in a plan that reduces Verizon North's rates to match the considerably lower Verizon PA rates). Verizon North's intrastate switched access revenues comprise 23% of its total revenues, in line with the percentages for the other RTCC ILECs.[72] As Ms. Berry testified, the entire annual intrastate operating income for Verizon North for 2002 was $36 million, an amount that is far less than the **[BEGIN VERIZON PROPRIETARY]** **[END VERIZON PROPRIETARY]** revenue

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[70] *PUC v. Denver and Ephrata Telephone & Telegraph Company*, R-00016682 (Opinion and Order entered November 30, 2001) at 7-8. The PUC made a similar statement in connection with approving Alltel's rate rebalancing increasing residential rates by $2.50 and business rated by $1.00. *PUC v. ALLTEL Pennsylvania, Inc.*, R-00027231 (Opinion and Order entered June 24, 2002) at 6.

[71] *1998 Access Recommended Decision* at 73-74.

[72] VZ St. 1.1 (Berry/Wirl Surrebuttal) at 22.

reduction required by the OCA/Verizon Joint Proposal. Under MCI's unreasonable demand that intrastate access rates be slashed below cost, without corresponding revenue offsets, Verizon North would be operating under a considerably higher revenue deficit per year. Like Judge Schnierle in 1998, the Commission should reject MCI's "extreme" position as "without merit."[73]

CONCLUSION

For the foregoing reasons, the Commission should adopt the RD of ALJ Fordham in its entirety.

Respectfully submitted,

Date: December 18, 2003

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Pennsylvania Inc. and
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[73] Equally unprincipled is MCI's argument that the Commission should look to "increased revenue realized by Verizon's entry into the in-region InterLATA market." (MCI Exceptions at 12). Verizon's new long distance services are, for the very large part, outside this Commission's jurisdiction. Moreover, Verizon has also incurred costs in entering this market and nothing in the record demonstrates that Verizon has made a net profit on its long distance entry in Pennsylvania.

DOCUMENT

DATE: January 7, 2004

SUBJECT: C-20027195

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James McNulty
Secretary
nvl

AT&T Communications of PA., Inc.
v.
Verizon North Incorporated

Copies of the Recommended Decision have been served upon all parties of interest.

Exceptions have been filed by:

Verizon Pa & Verizon North (Public & Proprietary Version)
OSBA (Public & Proprietary Version)
Worldcom Network SVCS (Public & Proprietary Version)
Qwest Communications Corp (Public & Proprietary Version)

Reply Exceptions have been received from:

Office of Consumer Advocate
Verizon Pa & Verizon North (Public & Proprietary Version)
Office of Small Business Advocate (Public & Proprietary Version)
Office of Trial Staff (Public & Proprietary Version)

cc: Susan Hoffner, ALJ

Julia A. Conover
Vice President and General Counsel
Pennsylvania

verizon

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Julia.A.Conover@Verizon.com

February 26, 2004

RECEIVED

FEB 2 6 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA UPS OVERNIGHT DELIVERY
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

DOCUMENT FOLDER

Re: AT&T Communications of Pennsylvania, LLC
v. Verizon North Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find the original and three copies of the Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate for Resolution of Litigation, in reference to the above captioned matter.

Because the enclosed Petition refers to Verizon Pennsylvania Inc.'s and Verizon North Inc.'s separately-filed 2004 Price Change Opportunity ("PCO") rate reduction, a public version of the PCO filing also is being sent to all parties on the service list.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Julia A. Conover

SDP/slb
Enc.

Via E-Mail and UPS Overnight Delivery
cc: The Honorable Cynthia W. Fordham
Attached Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC,	:	
v.	:	Docket No. C-20027195
VERIZON NORTH INC.	:	

PETITION OF VERIZON PENNSYLVANIA INC., VERIZON NORTH INC., OFFICE OF SMALL BUSINESS ADVOCATE AND OFFICE OF CONSUMER ADVOCATE FOR RESOLTION OF LITIGATION

Verizon Pennsylvania, Inc. and Verizon North Inc. ("Verizon"), the Office of Small Business Advocate ("OSBA") and the Office of Consumer Advocate ("OCA") have reached an agreement on a plan to implement access charge reductions for Verizon that is consistent with OCA/Verizon Joint Proposal approved by Administrative Law Judge Cynthia Fordham in her Recommended Decision issued by the Commission on November 18, 2003. As discussed in this Petition, this proposal would adopt uniform access rates and rate structures for the two Verizon companies and would reduce Verizon North's carrier charge of $8.64 per line per month to equal Verizon PA's carrier charge, which is currently $0.61.[1] Under the terms of agreement described

[1] Verizon PA's carrier charge was reduced from $0.63 to $0.61 in November, after the record in this case was closed. The intent of the OCA/Verizon Joint Proposal is for the rates for Verizon North and Verizon PA to be the same, so the CCL for Verizon North would also be reduced to $.61. That change is

herein, Verizon PA's and Verizon North's 2004 Price Change Opportunity (PCO) rate reduction would be used to offset these reductions so that the average increases to business basic local service rates would be no greater than the increases to the residential basic service rates contained in the OCA/Verizon Joint Proposal, and in no event greater than $1.00 per business line. In return for this agreement, OSBA withdraws its Exceptions to the Recommended Decision. In addition, OSBA and OCA both agree to support Verizon's request to use the 2004 PCO amounts to offset the access rate decreases agreed to in the OCA/Verizon Joint Proposal, thereby mitigating the total amount of the offsetting local rate increases. Effectively, the PCO funding will be used to limit the amount of local rate increases while maintaining all of the access rate reductions proposed in the original settlement. Verizon is concurrently filing its proposal to use the 2004 PCO in this manner. OCA, Verizon and the OSBA request that the Commission grant this Petition, and adopt the Recommended Decision, as modified by this Petition, as soon as possible. In support of this Petition, the parties state as follow:

1. This proceeding relates to the switched access rates that IXCs pay to local exchange carriers Verizon PA and Verizon North for originating and terminating intrastate long distance traffic on the facilities of these Verizon companies. On December 30, 2002, Verizon filed a Petition to open this proceeding to adopt statewide access rates for Verizon PA and Verizon North. Verizon's petition fulfilled its commitment under the Commission's November 4, 1999 Order approving the Bell Atlantic/GTE merger. Specifically, the Commission required that "[w]ithin thirty months after merger closing, GTE-North and BA-PA will commence a

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reflected in the document attached hereto.

proceeding for the purpose of determining statewide rates for access charges based upon consolidated cost studies." [2]

2. Verizon's filing presented a proposal to merge the rates and rate structures of Verizon PA and Verizon North in Pennsylvania through a two-step process. The first step of Verizon's filing allows the two Verizon companies to align their access rate structures without reducing the overall revenues from access. The next step provided the flexibility to reduce the melded access rates, as long as any reductions are offset by revenue neutral increases to basic rates.

3. During the course of litigation, Verizon and OCA developed a specific proposal for implementation of Verizon's framework, the terms of which were described in Exhibit DMB-1 to Verizon's Statement 1.1. The Joint Proposal by Verizon and OCA provides that, after the initial melding of rates, Verizon's overall average traffic sensitive rates would not be reduced, but the IXC carrier charge would be reduced to the level of Verizon PA's current rate (currently $0.61) -- a reduction of more than 50% from the consolidated rate and a rate that is a fraction of Verizon North's current carrier charge of $8.64. Verizon and OCA further agreed that any reductions would be offset by revenue-neutral basic rate increases, and the OCA/Verizon Joint Proposal, as previously submitted, specifies that no more than $40 million of the access revenue reduction will be recovered through increases to residential basic local service rates on a combined Verizon PA and Verizon North basis, and that any such increases would not exceed $1.00 per residential line. See Exhibit DMB-1. The remainder of the access reduction (that is,

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[2] *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIS 86 (Opinion and Order entered November 4, 1999) ("*Merger Approval Order*"). Verizon PA is the company formerly known as Bell Atlantic Pennsylvania, Inc., and Verizon North is the company that was formerly known as GTE-North.

the amount above $40 million) would be recovered through increases to business local service rates, again on a combined Verizon PA and Verizon North basis.

4. The OSBA opposed the Joint Proposal, arguing, among other things, that The OCA/Verizon Joint Proposal was inequitable and that the rate increase for small business customers was indeterminate.

5. On November 18, 2003, the Commission issued the Recommended Decision (RD) of ALJ Fordham, which adopted the OCA/Verizon Joint Proposal. On December 8, 2003, the OSBA filed Exceptions to that RD.

6. On October 30, 2003, Verizon filed a letter with the Commission requesting to delay the filing of its annual Price Change Opportunity (PCO) under the Chapter 30 Plans of Verizon Pa and Verizon North, pending resolution of this proceeding, in order to avoid any customer confusion that could arise from having multiple rate changes. Verizon requested that it be permitted to file its 2004 PCOs once a final order in this proceeding was entered.

7. On November 12, 2003, the Office of Consumer Advocate filed a letter opposing Verizon's request to postpone its 2004 PCO, and expressing confidence that the PCO could be coordinated with any reductions arising from this proceeding. OCA also expressed concern that Verizon had not identified the amount of the PCO rate decreases in its request for a delay. On January 21, 2004, Verizon responded to the OCA's letter. In that letter, Verizon stated that the 2004 PCO would result in approximately $13 million in rate reductions for Verizon Pennsylvania and approximately $1.0 million in rate reductions for Verizon North. Verizon also stated that it had not decided how to use the PCO reductions, but was considering using those reductions to fund access charge reductions that could result from this docket, or to fund Lifeline.

8. While Verizon, OSBA and OCA continue to believe that their litigation positions are valid, the parties have subsequently had discussions that would result in OSBA's support of an amended OCA/Verizon Joint Proposal, and resolve OCA's concerns about the 2004 PCO. Specifically, Verizon has agreed to use the 2004 PCOs for both Verizon Pa and Verizon North to offset the access reductions resulting from this case and to ensure that the increases for business local exchange customers would be no greater than the increases for residential local exchange customers.

9. The petitioners therefore request that the Commission adopt the following proposal:

a. First, the Commission should adopt the RD, modified to limit the rate increases for business local exchange customers, as set forth in the attached Revised Exhibit DMB –1. This proposal would maintain the same level of access reductions as authorized in the RD, but would limit the average offsetting rate increase on business local exchange lines to be the same as the increase imposed on residential local exchange lines.[3]

b. Second, the Commission should adopt Verizon's proposal to use the full amount of the 2004 PCOs to offset the local exchange increases that would otherwise be required by the access charge decreases. The proposal would permit the 2004 PCO amounts to be used as a funding source for the access charge reductions, to minimize the level of offsetting local exchange increases for both residential and business customers. As set forth in Verizon's PCO

[3] As set forth in Revised Exhibit DMB-1, attached hereto, these increases would be applied to dial tone line rates for all customers subscribing to that service on a non-package basis.

filing, filed concurrently with this Petition, the total amount of the 2004 PCO is a $13,480,000 rate reduction for Verizon PA and a $1,415,000 rate reduction for Verizon North.[4] Verizon estimates that if the full amount is used to offset the access charge reductions recommended in the RD, the local exchange increases will be less than 85 cents per residential and business dial tone line. Verizon will make a compliance filing after Commission approval of this proposal that contains a final calculation of the amount of the rate changes, based on updated volumes.

c. Finally, the Commission should adopt Verizon's proposal to use that portion of the 2004 PCO that accrue from January 1, 2004 until such date as any new rates become effective (the "PCO lag") to be used to fund Verizon's Lifeline programs. At the time of any compliance filing, Verizon will quantify the dollar amount of the PCO lag.

10. The parties believe that this Petition would result in an equitable resolution of the issues in this proceeding, and is in the public interest. As stated above, this Petition would result in the same access rate consolidation and reductions as contained in the OCA/Verizon Joint Proposal that was adopted in the Recommended Decision. This Petition would, however, mitigate substantially the potential rate increases on residential and business local exchange customers that would result from the access rate reductions.

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[4] In addition, ALJ Fordham recommended that the $243,517 carryover from Verizon's 2003 PCO be added to the 2004 PCO filing, bringing the total two company PCO reduction to $15,138,517.

WHEREFORE the undersigned parties respectfully request that the Commission adopt the proposal contained in this Petition and in the Verizon 2004 PCO filing.

Respectfully submitted,

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Counsel for Office of Consumer Advocate

DATED: February 26, 2004

WHEREFORE the undersigned parties respectfully request that the Commission adopt the proposal contained in this Petition and in the Verizon 2004 PCO filing.

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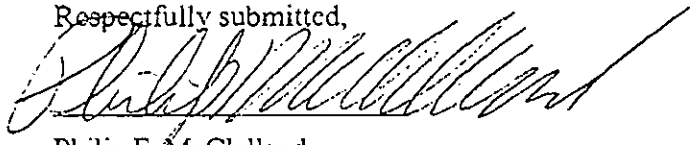

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DATED: February 26, 2004

PROPRIETARY INFORMATION

Docket Number C-20027195

Name of Document DMB Exhibit 1

Date Document Received 2-26-2004

DOCUMENT CONTAINS

PROPRIETARY INFORMATION

CERTIFICATE OF SERVICE

I, Julia A. Conover, hereby certify that I have this day served a copy of the Petition of Verizon Pennsylvania Inc., Verizon North, Inc., Office of Small Business Advocate and Office of Consumer Advocate for Resolution of Litigation, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 26th day of February, 2004.

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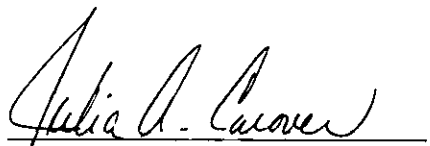

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Cara A. Boyanowski, Esquire
Patricia A. Patton, Office Mgr./Paralegal

April 1, 2004

The Honorable James J. McNulty
Secretary's Bureau
Pennsylvania Public Utilities Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

In Re: The Joint Petition of Bell Atlantic Corporation and
GTE Corporation for Approval of Agreement and of Merger
Docket No. C-20027195

Dear Mr. McNulty:

Please find enclosed for filing an original and four copies of the letter changing counsel's address and a certificate of service in the above-captioned matter. Please return a time-stamped copy of the certificate of service and letter to me in the envelope provided with this letter.

Please also change the Commissions's official certificate of service to reflect my new contact information.

Thank you for your professional courtesy.

If you have any questions regarding this filing, please feel free to contact me at any time.

Very truly yours,

DALEY, ZUCKER, & GINGRICH, LLC

Kathleen Misturak

RJP

Kathleen Misturak-Gingrich

KMG/smh

Enclosures

179

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In re The Joint Petition of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and of Merger	:	
AT&T Communications of Pennsylvania, Inc.	:	Docket No. C-20027195
v.	:	
Verizon North, Incorporated	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this 1st day of April, 2004 caused a true copy of the attached change of address letter to be served upon the parties of record in the above-referenced docket, in accordance with the requirements of 52 Pa. Code §§ 1.52 and 1.54 in the manner and upon the parties listed below:

Via First Class Mail:

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Fax: 717.237.7161
akohler@wolfblock.com
dclearfield@wolfblock.com

The Honorable James J. McNulty
Secretary's Bureau
Pennsylvania Public Utilities Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Kathleen Misturak-Gingrich, Esquire

DALEY, ZUCKER & GINGRICH, LLC
ATTORNEYS AT LAW

Kathleen Misturak-Gingrich
Attorney At Law
717-657-4795, Ext. 14
Direct Dial: 717-657-4800
E-mail: kgingrich@dzglaw.com

Kathleen Carey Daley, Esquire
Patricia Carey Zucker, Esquire
Cara A. Boyanowski, Esquire
Patricia A. Patton, Office Mgr./Paralegal

April 1, 2004

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Julia A. Conover, Esquire
Verizon Pennsylvania, Inc.
1717 Arch Street 32 NW
Philadelphia, PA 19103

Zsuzsanna E. Benedek, Esquire
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240 North Third Street
Harrisburg, PA 17101

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Regina L. Matz, Esquire
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Qwest Communications Corporation
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1801 California Street
Denver, CO 80202

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Barrett C. Sheridan, Esquire
Joel H. Cheskis, Esquire
Shaun A. Sparks, Esquire
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Harrisburg, PA 17101-1923

Alan Kohler, Esquire
Daniel Clearfield, Esquire
Wolf Block Schorr & Solis-Cohen
Locust Court, Suite 300
212 Locust Street
Harrisburg, PA 17101

John F. Povilaitis, Esquire
Ryan Russell Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Re: In re The Joint Application of Bell Atlantic Corporation
And GTE Corporation for Approval of Agreement And of Merger

AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.
Docket No. C-20027195

Ladies and Gentlemen:

Effective immediately, please change your records to reflect my new contact information as listed on this correspondence. Thank you for your courtesy and cooperation.

Very truly yours,

DALEY, ZUCKER, & GINGRICH, LLC

Kathleen Misturak-Gingrich

KMG:smh

cc: James J. McNulty, Secretary
Pennsylvania Public Utility Commission

DALEY, ZUCKER & GINGRICH, LLC
ATTORNEYS AT LAW

Kathleen Misturak-Gingrich
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717-657-4795, Ext. 14
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Patricia Carey Zucker, Esquire
Cara A. Boyanowski, Esquire
Patricia A. Patton, Office Mgr./Paralegal

April 1, 2004

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Philadelphia, PA 19103

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United Telephone
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Robert C. Barber, Esquire
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Office of Trial Staff
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Denver, CO 80202

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212 Locust Street
Harrisburg, PA 17101

John F. Povilaitis, Esquire
Ryan Russell Ogden & Seltzer LLP
Suite 101
800 North Third Street
Harrisburg, PA 17102-2025

Re: In re The Joint Application of Bell Atlantic Corporation
And GTE Corporation for Approval of Agreement And of Merger

AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.
Docket No. C-20027195

Ladies and Gentlemen:

Effective immediately, please change your records to reflect my new contact information as listed on this correspondence. Thank you for your courtesy and cooperation.

Very truly yours,

DALEY, ZUCKER, & GINGRICH, LLC

Kathleen Misturak-Gingrich

KMG:smh

cc: James J. McNulty, Secretary
Pennsylvania Public Utility Commission

COMMONWEALTH OF PENNSYLVANIA

ORIGINAL

OFFICE OF SMALL BUSINESS ADVOCATE
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, Pennsylvania 17101

William R. Lloyd, Jr.
Small Business Advocate

(717) 783-2525
(717) 783-2831 (FAX)

July 15, 2004

HAND DELIVERED

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon Pennsylvania, Inc.
Docket No. C-20027195

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of a:

1. Notice of Withdrawal of Appearance on behalf of the Office of Small Business Advocate in the above captioned matter; and

2. Notice of Appearance on behalf of the Office of Small Business Advocate in the above captioned matter.

Copies of each of the documents listed above are being served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

William R. Lloyd, Jr.

William R. Lloyd, Jr.
Small Business Advocate

Enclosures
cc: Hon. Cynthia Williams Fordham
Administrative Law Judge

Parties of Record

69

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North Inc.	:	

NOTICE OF WITHDRAWAL OF APPEARANCE

The Office of Small Business Advocate, pursuant to 52 Pa. Code § 1.24, hereby withdraws the appearance of Angela T. Jones, as counsel of record in the above captioned proceeding.

Angela T. Jones
Assistant Small Business Advocate

For:
William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: July 15, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North Inc.	:	

NOTICE OF APPEARANCE

The Office of Small Business Advocate, pursuant to 52 Pa. Code § 1.24, hereby enters the appearance of **William R. Lloyd, Jr.**, replacing Angela Jones as counsel of record, in the above captioned proceeding.

Documents in this proceeding should now be served on the following:

William R. Lloyd, Jr.
Small Business Advocate
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
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(717) 783-2525
(717) 783-2831 (fax)
willloyd@state.pa.us

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
(717) 783-2525
(717) 783-2831 (fax)

Dated: July 15, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North Inc.	:	

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Notice of Withdrawal of Appearance and the Notice of Appearance on behalf of the Office of Small Business Advocate by first class mail upon the persons addressed below:

Hon. Cynthia W. Fordham
Administrative Law Judge
Pa. Public Utility Commission
1302 Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130
(215) 560-3133 (fax)

Kenneth L. Mickens, Esquire
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
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Susan DeBusk Paiva, Esquire
Verizon Pennsylvania, Inc.
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(Qwest)
(717) 236-7714
(717) 236-7816 (fax)

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Daley, Zucker & Gingrich
1029 Scenery Drive
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(717) 238-7844 (fax)

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(703) 691-6093 (fax)

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Washington, DC 20036
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(202) 736-6242

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Alan Kohler, Esquire
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(717) 255-7600
(717) 236-8278 (fax)

William R. Lloyd, Jr.
Small Business Advocate

Date: July 15, 2004

DOCUMENT

COMMONWEALTH OF PENNSYLVANIA

DATE: July 27, 2004

SUBJECT: C-20027195, P-00930715, and P-00001854

TO: Director, Bureau/Office of Administrative Law Judge

FROM: Janey Gast, Chief Compliance and Document Management

AT&T Communications of Pennsylvania, LLC — C-20027195
V
Verizon North Inc. and Verizon Pennsylvania Inc.

Petition of Verizon Pennsylvania Inc., Verizon North Inc., Office of Small Business Advocate and Office of Consumer Advocate for Resolution of Litigation

Verizon Pennsylvania Inc.'s 2003 Price Change Opportunity — P-00930715
Verizon Pennsylvania Inc.'s 2004 Price Change Opportunity

Verizon North Inc.'s 2004 Price Change Opportunity — P-00001854

The Commission at Public Meeting held July 23, 2004, adopted an order in the above entitled proceeding.

Please direct your attention to the ``Ordering Paragraph(s)'' for your Bureau's/Office's ongoing responsibility as identified therein.

Kindly acknowledge receipt of this memo by signing below and return this memo to:

Secretary's Office
Attn: Docketing Section
KEYSTONE BUILDING 2ND FLOOR

Thank you for your cooperation in this matter!

Receipt acknowledged:

(signature) A. Hoffner

(date) 7-28-04

RECEIVED
2004 JUL 28 PM 1:10
PUBLIC UTILITY COMM.

RECEIVED
2004 JUL 29 PM 9:09
SECRETARY'S BUREAU

DOCKETED
AUG 11 2004

PUC-77
304007

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet **20**

1. **REPORT DATE:** July 1, 2004	2. **BUREAU AGENDA NO.:** JUL-2004-OSA-0138*
3. **BUREAU:** Office of Special Assistants	
4. **SECTION(S):**	5. **PUBLIC MEETING DATE:** July 8, 2004
6. **APPROVED BY:** **Director:** C.W. Davis 7-1827 **Mgr/Spvr:** **Legal Review:**	
7. **PERSONS IN CHARGE:** R. Marinko 3-3930/A. Arnold 7-8032	DOCUMENT FOLDER
8. **DOCKET NO.:** C-20027195	

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) AT&T Communications of PA Inc. (AT&T) v. Verizon North Inc. (VZ-North) and Verizon Pennsylvania Inc (VZ-PA); Petition of VZ-PA, VZ North, OSBA and OCA for Resolution of Litigation; VZ-PA's 2003 Price Change Opportunity (PCO) Filing; VZ-PA and VZ North's 2004 PCO Filings.

(b) On March 21, 2002, AT&T filed a Formal Complaint at Docket No. C-20027195 against VZ-North seeking to have VZ-North's access charges reduced to VZ-PA's levels pursuant to the requirements in the Commission's *Merger Order* at Docket No. A-310200F002. AT&T's Formal Complaint was initially dismissed and subsequently reinstated by Commission Order entered December 24, 2002. On December 30, 2002, VZ PA and VZ North filed a Joint Petition for Access Reform in accordance with the Commission's *Merger Order*. That Order also bifurcated the generic access charge investigation at Docket No. M-00021596 so that all pertinent access charge matters pertaining to VZ-PA and VZ-North, including AT&T's Formal Complaint and all matters relating to access charge parity between VZ-North and VZ-PA resulting from the *Merger Order* would be litigated at Docket No. C-20027195. On November 18, 2003, ALJ Fordham's Recommended Decision was issued, wherein she, *inter alia*, denied the Joint Petition for Access Reform and recommended that the Commission adopt the Verizon/OCA Proposal and mark the proceeding closed. Exceptions and Reply Exceptions were filed. On February 26, 2004,

(CONTINUED)

10. MOTION BY: **Commissioner** Pizzingrilli
SECONDED: **Commissioner** Chm. Fitzpatrick

Commissioner Bloom - Yes
Commissioner Thomas - Yes
Commissioner Holland - Yes

CONTENT OF MOTION: Postponement to Public Meeting of July 23, 2004 for the Commission's further consideration.

VZ-PA, VZ-North, OCA and OSBA filed a Petition for Resolution of Litigation proposing, *inter alia*, the use of VZ-PA's and VZ North's negative 2004 PCO monies as well as the carryover from VZ-PA's 2003 PCO. VZ-PA and VZ-North concurrently filed their 2004 PCO Filings on February 26, 2004.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which modifies, and reverses in part, the ALJ's Recommended Decision; by (1) granting the Joint Petition for Resolution of Litigation; (2) approving VZ-PA's and VZ-North's 2004 PCO calculations and grants their request for the use of the associated monies from the 2004 PCO and the remaining carryover of VZ-PA's 2003 PCO; and (3) remand certain matters concerning access charge reform back to the ALJ for further development of the record and issuance of a Recommended Decision. **(Remanded).**

PUC-77
304007

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet 26

1. **REPORT DATE:** July 1, 2004	2. **BUREAU AGENDA NO.:** JUL-2004-OSA-0138*
3. **BUREAU:** Office of Special Assistants	
4. **SECTION(S):**	5. **PUBLIC MEETING DATE:** July 23, 2004
6. **APPROVED BY:** **Director:** C.W. Davis 7-1827 **Mgr/Spvr:** **Legal Review:**	
7. **PERSONS IN CHARGE:** R. Marinko 3-3930/A. Arnold 7-8032	
8. **DOCKET NO.:** C-20027195	

9. (a) CAPTION (abbreviate if more than 4 lines)
(b) Short summary of history & facts, documents & briefs
(c) Recommendation

(a) AT&T Communications of PA Inc. (AT&T) v. Verizon North Inc. (VZ-North) and Verizon Pennsylvania Inc (VZ-PA); Petition of VZ-PA, VZ North, OSBA and OCA for Resolution of Litigation; VZ-PA's 2003 Price Change Opportunity (PCO) Filing; VZ-PA and VZ North's 2004 PCO Filings.

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(continued on next page)

Order Doc. No. 472423v1 Calendar Doc. No. 481805v1

10. MOTION BY: **Commissioner** Chm. Fitzpatrick
SECONDED: **Commissioner** Bloom

Commissioner Thomas - Yes
Commissioner Pizzingrilli - Yes
Commissioner Holland - Yes

CONTENT OF MOTION: Staff recommendation adopted.

VZ-PA, VZ-North, OCA and OSBA filed a Petition for Resolution of Litigation proposing, *inter alia*, the use of VZ-PA's and VZ North's negative 2004 PCO monies as well as the carryover from VZ-PA's 2003 PCO. VZ-PA and VZ-North concurrently filed their 2004 PCO Filings on February 26, 2004.

(c) The Office of Special Assistants recommends that the Commission adopt the proposed draft Opinion and Order which modifies, and reverses in part, the ALJ's Recommended Decision; by (1) granting the Joint Petition for Resolution of Litigation; (2) approving VZ-PA's and VZ-North's 2004 PCO calculations and grants their request for the use of the associated monies from the 2004 PCO and the remaining carryover of VZ-PA's 2003 PCO; and (3) remand certain matters concerning access charge reform back to the ALJ for further development of the record and issuance of a Recommended Decision. **(Remanded).**

Concurred In:

Elizabeth Barnes

Elizabeth Barnes, Law Bureau

Janet Tuzinski

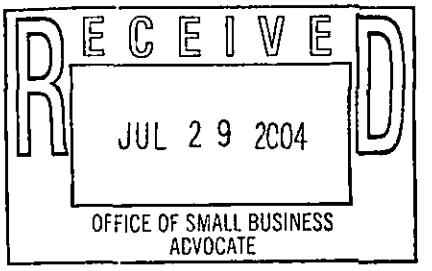
Janet Tuzinski, Bureau of Fixed Utility Services

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of_____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

WILLIAM R LLOYD JR DIRECTOR
OFFICE OF SMALL BUSINESS ADVOCATE
COMMERCE BLDG STE 1102
300 NORTH SECOND STREET
HARRISBURG PA 17101



_____
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of AUG 2 2004, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

REP ANTHONY WILLIAMS
100 SOUTH OFFICE BUILDING
HARRISBURG PA 17120

MESSINGER

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU

AUG -3 AM 9:13

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

JUL 30 2004

AND NOW, to wit, this _____ day of_____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

SENATOR HARDY WILLIAMS
168 MAIN CAPITOL BUILDING
HARRISBURG PA 17120

MESSINGER

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

RECEIVED
2004 AUG -2 AM 9:38
SECRETARY'S BUREAU

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 4 day of August, 2004,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

MATTHEW N WIRGHT MEMBER
HOUSE POST OFFICE BOX 4
HARRISBURG PA 17120-0028

MESSINGER

Matthew N. Wright
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

RECEIVED
AUG 2 2004

SECRETARY'S BUREAU
PA PUC
2004 AUG -5 PM 12:05
RECEIVED

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29th day of July, 2004,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

KENNETH L MICKENS ESQUIRE
PA PUBLIC UTILITY COMMISSION
OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

RECEIVED
04 JUL 29 PM 1:16
SECRETARY'S BUREAU

RECEIVED
04 JUL 29 AM 9:36
OFFICE OF TRIAL STAFF

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 29th day of July, 2004,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

KANDACE F MELILLO ESQUIRE
JOHNNIE SIMMS ESQUIRE
KENNETH MICKENS ESQUIRE
PA PUC OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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OFFICE OF TRIAL STAFF

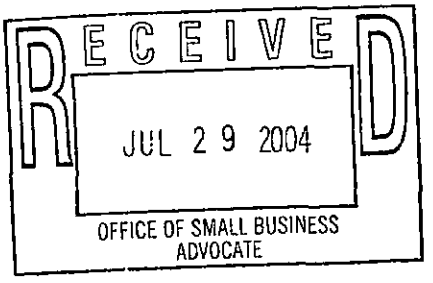
04 JUL 29 PM 1:16
SECRETARY'S BUREAU
RJP

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of_____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

STEVEN C GRAY ESQUIRE
ANGELA T JONES ESQUIRE
OFFICE OF SMALL BUSINESS ADVOCATE
SUITE 1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101



_____
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 9 day of Aug, 2004

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

ALLAN EGOLF STATE
REPRESENTATIVE
86TH LEGISLATIVE DISTRICT
HOUSE PO BOX 109 MAIN
CAPITOL BUILDING
HARRISBURG PA 17120-0028
MESSINGER

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

SECRETARY'S BUREAU

04 AUG 10 AM 8:49

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of_____, 20__,

the undersigned, as evidenced by execution hereof, acknowledges receipt, and accepts service of an Opinion and Order, an official Commission document entered, issued, or otherwise promulgated under date of July 28, 2004, at Docket Nos. C-20027195, et al., on behalf of:

GARRY DETESTA
SEN PORTERFIELD'S OFFICE
186 MAIN CAPITOL BLDG
HARRISBURG PA 17120

MESSINGER

_____
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU RECORD RETENTION
PA PUBLIC UTILITY COMMISSION
KEYSTONE BUILDING 2ND FLOOR
400 NORTH STREET
Harrisburg, PA 17105-3265

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Patricia A. Patton, Office Mgr./Paralegal
Susan M. Hudson, Paralegal

August 4, 2004

The Honorable James J. McNulty
Secretary's Bureau
Pennsylvania Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: Change of Address
Access Charge Reduction
Docket No. C-20027195

Dear Mr. McNulty:

Please change the records in the above-referenced matter to note that my law firm affiliation has changed effective February 1, 2004 and that my new address and law firm information are as follows:

Kathleen Misturak-Gingrich, Esquire
Daley, Zucker & Gingrich, LLC
1029 Scenery Drive
Harrisburg, PA 17109
Telephone No.: 717.657.4795, Ext. 14; Direct Dial: 717.657.4800
E-mail: kgingrich@dzglaw.com

If you have any questions regarding this address change, please feel free to contact my office at any time.

Very truly yours,

DALEY, ZUCKER, & GINGRICH, LLC

Kathleen Misturak-Gingrich

KMG/smh

cc: Attached Service List

2

SERVICE LIST

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P. O. Box 12060
Harrisburg, PA 17108

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AT&T Communications of PA, Inc.
3033 Chain Bridge Road, Room 3D
Oakton, VA 22185

Philip F. McClelland, Esquire
Joel H. Cheskis, Esquire
Shaun A. Sparks, Esquire
Office of Consumer Advocate
Forum Place
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923

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Julia A. Conover, Esquire
Verizon Pennsylvania Inc.
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Ronald F. Weigel, Director
Government Relations
Verizon
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Harrisburg, PA 17101

Suzsanna E. Benedek, Esquire
Sprint Communications Company, LP
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Harrisburg, PA 17101

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R. Matz, Esquire
T. Thomas, Esquire
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Kristin Smith, Esquire
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Pennsylvania

verizon

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Julia.A.Conover@Verizon.com

August 9, 2004

VIA UPS OVERNIGHT DELIVERY
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, LLC
v. Verizon North Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find the original and three copies of the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Reconsideration, in reference to the above captioned matter.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Julia A. Conover

JAC/meb
Enc.

Via UPS Overnight Delivery
cc: The Honorable Cynthia W. Fordham
Via Email & UPS Overnight Delivery
Attached Certificate of Service

182

CERTIFICATE OF SERVICE

I, Julia A. Conover, hereby certify that I have this day served a copy of the Petition of Verizon Pennsylvania Inc. and Verizon North, Inc. for Reconsideration, upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (related to service by a participant) and 1.55 (related to service upon attorneys).

Dated at Philadelphia, Pennsylvania, this 9th day of August, 2004.

VIA E-MAIL AND UPS OVERNIGHT DELIVERY

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Regina L. Matz, Esquire
Thomas, Thomas, Armstrong
& Niesen
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Harrisburg, PA 17108-1166

Julia A. Conover
Attorney for Respondents
Verizon Pennsylvania Inc.
Verizon North Inc.
1717 Arch Street, 32W
Philadelphia, PA 19103
(215) 963-6001

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC,	:	
	:	
v.	:	**Docket No. C-20027195**
	:	
VERIZON NORTH INC.	:	

PETITION OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC. FOR RECONSIDERATION

Verizon Pennsylvania Inc. and Verizon North Inc. ("Verizon") respectfully petition for reconsideration of that portion of the Commission's Order entered July 28, 2004[1] remanding this case to the Administrative Law Judge ("ALJ") for consideration of certain limited issues related to further access charge reform. These issues were already fully developed in the record below, fully briefed before the ALJ, and considered in the ALJ's decision to adopt the OCA/Verizon Joint Proposal. Moreover, these issues were expressly raised in Exceptions and Reply Exceptions filed with this Commission. There is no additional record development that is necessary, and no further purpose for this remand.

To be clear, Verizon understands that the Commission may wish to continue to investigate issues related to access charge reform, but those issues can more appropriately be

[1] *AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania, Inc.*, Dkt.

addressed in a new proceeding. That would be consistent with the *Global Order* and with the Commission's Order entered July 10, 2003 adopting the Joint Procedural Stipulation applicable to the Rural Telephone Company Coalition (RTCC) and The United Telephone Company of Pennsylvania.[2] Closing this docket and starting a new docket will also avoid thorny procedural issues, like determining if the July 28th Order is a final order or an interlocutory order. Finally, opening a new access reform docket will enable the Commission to address access reform on a generic basis.

Verizon therefore respectfully requests that the Commission reconsider the decision to remand this matter, and instead mark this case closed. In support therefore, Verizon states as follows:

1. This case is a combined docket to implement the condition in the Commission's approval of the parent-level merger that united Verizon North Inc. and Verizon Pennsylvania Inc. (collectively "Verizon") under common ownership to set "statewide access rates" for the two companies,[3] and also to respond to a complaint by AT&T of Pennsylvania, LLC ("AT&T") seeking to reduce Verizon North's higher access rates to match the level of Verizon PA's.[4]

2. During the course of this proceeding, Verizon and the Office of Consumer Advocate ("OCA") reached an agreement on a plan to implement access charge reductions for Verizon that,

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C-20027195 (Opinion and Order entered July 28, 2003)("July 28 Order").

2 *Access Charge Investigation per Global Order of September 30, 1999,* Docket Nos. M-00021596, P-00991648. P-00991649 (Order entered July 10, 2003)("RTCC-Sprint/United Access Order").

3 *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger*, Docket Nos. A-310200F0002; A-310222F0002; A-310291F0003; A-311350F0002, 1999 Pa. PUC LEXIS 86 (Opinion and Order entered November 4, 1999) ("*Merger Approval Order*").

4 The Commission consolidated AT&T's complaint with Verizon's merger filing. *See Access Charge Investigation per Global Order of September 30, 1999*, Docket Nos. M-00021596, etc., (Order entered May 5, 2003).

consistent with the framework Verizon initially proposed, achieves both goals and leaves the two Verizon companies with the lowest carrier access charges in the state.[5] The proposal was based on a framework virtually identical to that which the Commission approved as the basis for access rate restructuring for all of the other ILECs in Pennsylvania, and which the Commission found to be in the public interest and consistent with the Commission's objectives.[6]

3. Following hearings and briefing by all parties, Administrative Law Judge Cynthia Fordham issued a Recommended Decision adopting the OCA/Verizon Joint Proposal. While this decision was pending on exceptions before the Commission, Verizon, OCA and OSBA filed a Petition for Resolution that enhanced, but was consistent with, the OCA/Verizon Joint Proposal approved by ALJ Fordham. As the July 28th Order recognized, "the IXCs generally are of the opinion that the ALJ's recommendation to approve the OCA/Verizon Joint proposal is a significant step in the right direction." (July 28th Order at 13).

4. In the July 28th Order, the Commission adopted the Petition for Resolution filed by Verizon, OSBA and OCA, finding that it is "just, fair, reasonable and in the public interest." (July 28th Order at 33). Nevertheless, the Commission declined to terminate the docket, but instead "remand[ed] this case back to the ALJ for the further development of the record and the issuance of a recommended decision concerning those policy issues and other access charge concerns that were raised by the IXCs in their Exceptions . . . ." (*Id.* at 16-17). The policy issues identified by the Commission include: (1) a recommendation of the "next steps" for access reform (*id.* at 16); (2) a recommendation on whether and when access charges should be reduced "to cost" (*id.* at 18); and (3) a recommendation on the elimination of the carrier charge (*id.* at 20). The Commission

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[5] Where the Verizon IXC carrier charge would be $0.61, the lowest carrier charge planned after implementation of the Sprint/RTCC Settlement is $1.22. Tr. 399.

[6] *Sprint/RTCC Settlement Approval Order*, slip. op. at 12.

concluded that a remand was appropriate because the ALJ "opted to refrain from offering specific recommendations on these specified issues." (*id.* at 16).

5. The Commission's conclusion is mistaken in at least three respects. First, there is no need to "further develop the record" on these issues, since the parties already fully addressed these issues in the testimony and briefs filed in the underlying proceeding. For example, Verizon's Main Brief specifically addressed why the IXCs' proposals to reduce access "to cost" were extreme and not consistent with either the Commission's *Global Order* nor the Commonwealth Court decision affirming that Order. [7] Similarly, these same issues were addressed in Verizon's Reply to the other parties' Exceptions to the Recommended Decision.[8]

6. Second, the Commission appears to be under the impression that the ALJ failed to address these policy arguments. In fact, ALJ Fordham did address these issues, either explicitly or implicitly, through the adoption of the OCA/Verizon Joint Proposal, and thus rejected the positions advanced by the IXCs. For example, she implicitly rejected the proposal that access rates be reduced to "cost" (as has this Commission on numerous occasions) by adopting the Joint Proposal and by recognizing the possible "rate shock" if access rates were reduced by a greater amount. RD at 58. Similarly, she expressly concluded that the proceeding be closed so that the Commission could "review the impact of the current reductions and reduce costs in subsequent proceedings if necessary." *Id.* at 59. Merely because the ALJ did not expressly address the many arguments made by the IXCs in favor of further access reductions does not mean that they were not considered and rejected. As the Commission itself recognized, it is "well established" that there is no requirement "to consider expressly or at length each contention or argument raised by the parties." July 28th Order at 12.

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[7] Verizon Main Brief at 37-44.

[8] Verizon Reply Exceptions at 13-20.

7. Most important, consideration of these "policy issues" goes far beyond the scope of this docket, which is not a generic policy docket. This docket was instituted for two reasons: (1) to implement the merger condition requiring that the two Verizon companies rates be at parity; and (2) to address AT&T's complaint against the Verizon North rates. The Joint Proposal adopted by the ALJ accomplished both goals without the need to consider the policy issues raised by the IXCs. These are precisely the kinds of issues more appropriately considered in a generic policy proceeding designed to address access charge reform, and this is precisely how the Commission has previously indicated that it would address these issues. Specifically, in the *Global Order,* the Commission stated that it would open a docket to "further refine solutions to the question of how the Carrier Charge pool will be reduced . . ." [9] Such a docket was intended to involve *all* carriers that had a carrier charge, not just Verizon.[10]

8. The Commission's Order is also inconsistent with its treatment of the Sprint/RTCC settlement. In that case, involving a virtually identical access reform proposal, the Commission closed the docket while noting:

> However, we do not intend to declare the access rates established by this Order as the final word on access reform. Rather, this is the next step in implementing continued access reform in Pennsylvania in an efficient and productive manner.[11]

Thus, as in this case, the Commission recognized that it may consider additional access reform in a later proceeding, but nonetheless closed the record in the current case. There is no valid reason that the Commission should not follow the same process here.

10. Finally, to the extent that the Commission wishes to continue to implement access charge reform in Pennsylvania, it can best do so through a new generic docket. A generic

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[9] *Global Order,* Ordering para. 4.

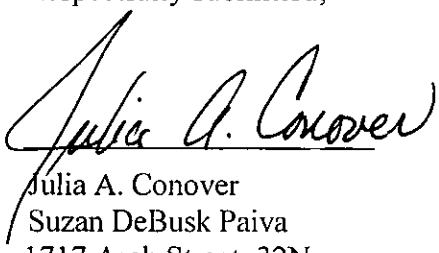
[10] *Id.* slip. op. at 59-60.

[11] RTCC-Sprint/United Access Order at 12.

proceeding can also take into consideration developments at the federal level, where the FCC continues to consider access charge reform proposals. This would be consistent with the *Global Order's* intent to address these issues on an industry-wide basis and with the resolution of the Sprint /RTCC Access Order.

WHEREFORE, Verizon respectfully petitions the Commission to reconsider its decision to remand this case to the ALJ for further proceedings and requests that the Commission instead mark this docket closed.

Respectfully submitted,



Julia A. Conover
Suzan DeBusk Paiva
1717 Arch Street, 32N
Philadelphia, PA 19103
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Fax (215) 563-2658

Counsel for Verizon Pennsylvania Inc. and
Verizon North Inc.

DATED: August 9, 2004

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE REFER TO OUR FILE

August 17, 2004

C-20027195

JULIA A. CONOVER
VICE PRESIDENT AND GENERAL COUNSEL
VERIZON
1717 ARCH STREET 32W
PHILADELPHIA PA 19103

Dear Ms. Conover:

Receipt is acknowledged of your Petition for Reconsideration, dated August 9, 2004 and received in this Office on August 9, 2004. The Commission's Rules of Administrative Practice and Procedure, set forth in Title 52 PA Code §1.36(a), require that such a Petition for Reconsideration shall be personally verified or notarized by a party or by an authorized officer of the party if it is a corporation or an association.

No verification or affidavit was attached to your Petition for Reconsideration and accordingly it can not be accepted for filing.

Enclosed please find forms and information with respect to verification, which must be completed and filed with this Office. We will hold your filing for 15 *days from the date of this letter. If the verification and/or notarization is not* received by that date it will be returned to you as unfiled, pursuant to 52 PA Code §1.4(d).

Sincerely,

James J. McNulty
Secretary

Enclosures

ksb

§1.36 Verification.

(a) *Applications, petitions, formal complaints, motions and answers* thereto containing an averment of fact not appearing of record in the action or containing a denial of fact shall be personally verified by a party thereto or by an authorized officer of the party if a corporation or association. Verification means a signed written statement of fact supported by oath or affirmation or made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities). If verification is required, notarization is not necessary.

§1.36 Verification.

Verification

I, _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief), and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

_____ _____

Date *Signature*

ORIGINAL

AT&T

Robert C. Barber
Senior Attorney

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703 691-6061
FAX 703 691-6093
EMAIL rcbarber@att.com

August 19, 2004

BY OVERNIGHT MAIL

James McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, LLC.
v. Verizon North, Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Mr. McNulty:

Please find enclosed for filing in the above-captioned matter the original and three (3) copies of AT&T Communications of Pennsylvania, LLC.'s Answer in Opposition to the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Reconsideration. Please do not hesitate to contact me with any questions regarding this submission.

Very truly yours,

Robert C. Barber

Enclosures

cc: (w/ encl)
The Honorable Cynthia W. Fordham
Service List

Certificate of Service
Docket No. C-20027195

The undersigned hereby certifies that true and correct copies of AT&T Communications of Pennsylvania, LLC.'s Answer in Opposition to Verizon Pennsylvania Inc. and Verizon North Inc.'s Petition for Reconsideration were caused to be served on the persons named below by electronic and overnight or first class mail in accordance with the requirements of 52 Pa. Code §§1.52 and 1.54:

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Thomas, Thomas, Niesen & Armstrong
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Harrisburg, PA 17108

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Wolf Block Schorr & Solis-Cohen
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Pennsylvania Public Utility Commission
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Kristin L. Smith, Esq.
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1801 California St. Suite 4900
Denver, CO 80202

Robert C. Barber

Dated: August 19, 2004

* By Overnight Mail

ORIGINAL

RECEIVED
AUG 19 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

AUG 1 9 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC.	
v.	**Docket No. C-20027195**
VERIZON NORTH, INC.	
and	
VERIZON PENNSYLVANIA INC.	

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC.'S ANSWER IN OPPOSITION TO THE PETITION OF VERIZON PENNSYLVANIA INC. AND VERIZON NORTH INC. FOR RECONSIDERATION

In its July 28, 2004 Opinion and Order, the Commission properly determined to adopt the rate rebalancing and access reduction proposals that were the centerpiece of the agreement between Verizon, the OCA, and the OSBA as a first, and long overdue, step on the road to final access reform for Verizon. At the same time, the Commission recognized that even the implementation of that proposal would only begin to address the access problem that the Commission had envisioned resolving three years ago. Accordingly, the Commission rejected Verizon's efforts to terminate this proceeding, and instead directed that it be remanded for further work aimed to solving the remaining issues associated with Verizon's inflated access charges.

That decision was fully supported by the record that was developed in this case. Indeed, that record – including data showing a substantial and ever increasing decline in Verizon's intrastate access revenues – makes it clear that conclusively

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and finally resolving Verizon's access problem as soon as possible is in the best interests of all parties, including Verizon.

But Verizon's access habit apparently is just too strong. Instead of cooperating in the Commission's efforts towards an expeditious and complete access solution, Verizon, content to let the problem fester for an indeterminate period of time, has moved for reconsideration of the decision to remand the case to the Administrative Law Judge, arguing that the case should be closed. However, none of the arguments advanced by Verizon justify the delay in achieving an access solution that would attend the grant of its petition, and its petition thus should be denied.

I. THE RECORD SUPPORTS CONTINUED ACTION BY THE COMMISSION TO COMPLETE ACCESS REFORM FOR VERIZON.

Interestingly, Verizon is on to something when it notes, in arguing against a remand, that "[t]here is no additional record development that is necessary" in this case.[1] AT&T agrees that the evidentiary record is comprehensive and compelling. Contrary to Verizon's position, however, that record does not support the termination of this case without further action towards resolving Verizon's access problem. Rather, it supports immediate aggressive action by the Commission to fully and finally resolve the remaining bloat in Verizon's intrastate access rates.

As a predicate matter, the record shows that the access rates charges by both Verizon companies today substantially exceed the cost of providing carrier

---

[1] Verizon Petition for Reconsideration at 1.

access services.[2] Even Verizon's witnesses acknowledged that its access rates have "not been tied to the cost of providing this service."[3]

The record developed in this case also underscores the severe adverse effect that those above-cost access rates are having on competition in Pennsylvania's telecommunications markets. For example, wireless carriers, especially Verizon's own wireless affiliate, have been wielding their artificial cost and pricing advantage over interexchange carriers – attributable to the fact that, unlike IXCs, wireless carriers pay no access charges on calls within their huge "local" calling areas – to essentially offer "free" long distance calling.[4] Verizon's ability to leverage its access advantage over the IXCs in its retail offerings has also played a key role in its unprecedented gains in the state's long distance market.[5] The result in both cases has been a dramatic, accelerating, and unjustified loss of toll traffic for IXCs.[6]

The record also demonstrates that even the reductions to Verizon North's Carrier Charge that Verizon estimates will result from implementation of the Verizon/OCA/OSBA settlement will still leave that company's access rates far in excess of Verizon's interstate rates. And that settlement does nothing at all to relieve the existing bloat in Verizon Pennsylvania Inc.'s intrastate access rates. In fact, Verizon's own data acknowledges that even after implementation of the approved settlement its intrastate access rates will remain inflated at a level that is

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2 *See* AT&T Stmt. 1.0 at 4-5; AT&T Stmt. 2.0 at 10 and OAO Rebuttal Exhibit 4.

3 VZ Stmt. 1.0 at 5-6.

4 AT&T Stmt. 1.0 at 11-18.

5 AT&T Stmt. 1.0, K-N Rebuttal Exhibit 7.

6 AT&T Stmt. 1.0 at 17-18, K-N Rebuttal Exhibit 3.

many tens of millions of dollars in excess of the cost of providing carrier access service.[7]

This is obviously cause for significant concern, and more than justifies the Commission's refusal to terminate this proceeding. Nevertheless, the record also shows that the ability to quickly and finally resolve the remaining problems with Verizon's access rates is already well within the Commission's reach. As AT&T described in its Main Brief in this case, the Commission can reduce and ultimately eliminate the implicit subsidies in Verizon's intrastate access rates in a manner that promotes competition in both the long distance and local exchange markets in just two years, through phased additional reductions in Verizon's access rates would result in offsetting local rate increases of about $1.57 a month.[8] Stated another way, the Commission is now in a position as a result of the evidence that already has been developed in this proceeding to largely eliminate the Verizon access problem once and for all in the space of two years, at a cost of two monthly local rate increases of less than 80 cents each.

In short, there already is ample evidence supporting Commission action to complete reform without the need for further remand to the ALJ. At a minimum, however, this record certainly does not support the termination of this case without any further proceedings to resolve the issues that remain open after implementation of the Verizon/OCA/OSBA settlement. Given the already fragile and steadily declining health of Pennsylvania's telecommunications markets that the record

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7 AT&T Cr. Exh. 7.

8 See AT&T Cr. Exhs. 5-7.

depicts, the Commission must not accede to Verizon's self-serving desire to put off a process for final reform for consideration in some inchoate proceeding at some indeterminate date. If the Commission determines not to act on the available evidence now to complete access reform for Verizon, it instead must proceed with the remand as described in the July 28 Order.

II. VERIZON'S ARGUMENTS FOR TERMINATING THIS CASE WITHOUT FURTHER ACTION ARE MERITLESS.

Verizon's arguments for closing the proceeding now without either further action by the Commission – either based on the current record or after the remand – do not withstand careful scrutiny. First, Verizon's assertion that closing the case will avoid "thorny procedural issues, like determining if the July 28th Order is a final order or an interlocutory order,"[9] is a red herring. Verizon cannot seriously be contending that the Commission needs to resolve the potential appellate status of an order that cannot reasonably be read as having aggrieved Verizon. The July 28th Order approved a settlement that Verizon itself proposed and that gave it the revenue neutral rate rebalancing it had requested. Any suggestion that Verizon would need to appeal such an order is just silly.

The same is true of Verizon's oxymoronic argument that a remand is unnecessary because the Administrative Law Judge "implicitly" addressed the concerns raised in the Commission June 28 Order.[10] That is really just another way of saying that the Recommended Decision was silent on these matters. In fact, the bulk of that decision is simply a recitation of some of the party's litigation positions in

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9 Verizon Petition for Reconsideration at 2.

10 Verizon Petition for Reconsideration at 4.

the case. As the Commission found, the Recommended Decision "failed to address some of the more significant policy issues raised by the Parties," including an issue that the Commission itself had raised in the *Global Order* -- the elimination of the Carrier Charge "and the removal of all implicit subsidies from access charges . . . "[11]

Verizon nevertheless claims that these issues are not appropriately considered in this case, which, according to Verizon, was intended only to address access rate parity between Verizon North and Verizon Pennsylvania and AT&T's complaint against Verizon North's access rates.[12] But this argument utterly ignores the origin of this case in the *Global Order*. As Verizon's witnesses in this case acknowledged,[13] the *Global Order* recognized the need to move Verizon's access charges to cost-based levels, finding that under the provisions of the Telecommunications Act of 1996 the Commission was required to "take the necessary steps to strive to replace the system of implicit subsidies with 'explicit and sufficient' support mechanisms to attain the goal of universal service in a competitive environment."[14] Recognizing that the access charge reductions that resulted from the *Global Order* had only just begun to address the problem of over-priced access, the Commission expressed its intention to commence a new investigation to address reductions in those charges. In fact, the Commission expressed its belief that "the sooner that we resolve the reduction and possible elimination of the carrier pool, the better it

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11 Opinion and Order, Docket No. C-20027195, July 28, 2004, at 16.

12 Verizon Petition for Reconsideration at 5.

13 VZ Stmt. 1.0 at 5-6.

14 *Joint Petition of Nextlink Pennsylvania, et al.*, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999 ("*Global Order*"), at 26-27.

would be for the competitive environment in Pennsylvania."[15] To that end, the Commission ordered the new investigation to commence on January 2, 2001, with a deadline to complete the case – and reduce rates – ***by December 31, 2001***.[16]

That investigation, as the Commission knows, was not initiated on the timetable established in the *Global Order.* And, obviously, it was not completed by the end of 2001. Instead, we are now on a course that apparently will not result in any access reductions for Verizon until the end of 2004, if not later. Thus, the comprehensive access reforms and reductions that the Commission contemplated in the *Global Order* and the *Verizon Merger Order* are now nearly ***three years overdue***, and the clock will continue to run even after the Verizon/OCA/OSBA settlement is implemented. That is three years of stunted development in the competitive landscape and, more importantly, three years during which Pennsylvania consumers paid too much for long distance services.

Verizon does not dispute that the Commission's goals from the *Global Order* have not been met, but rather insists that any investigation should be conducted as a generic proceeding, involving all other ILECs, rather than Verizon alone.[17] In other words, Verizon wants to use the state's smallest ILECs as shield against resolution

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15 *Global Order* at 60.

16 *Id.* Moreover, in its November 4, 1999 Opinion and Order approving the merger of Bell Atlantic and GTE to form Verizon, the Commission did not adopt GTE and Bell Atlantic's proposal to commence a proceeding 30 months after merger closing "for the purpose of developing access charge parity." *Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger,* Docket Nos. A-310200F0002 et al., Opinion and Order, Nov. 4, 1999 ("*Verizon Merger Order*"), at 37. Instead, the Commission ordered that the "issue of access charge parity for Bell Atlantic-Pennsylvania, Inc. and GTE North, Inc." would be resolved in the same access proceeding that had been provided for in the September 1999 Global Order." *Id.* at 46.

17 Verizon Petition for Reconsideration at 5-6.

of its huge access problem. This is just a recipe for further delay and obfuscation. It makes no sense for the Commission to postpone fixing the access issues posed by Verizon – with its millions of access lines spread across the Commonwealth – in order to address the access issues that remain with isolated carriers like Bentleyville Telephone Company or Yukon Waltz. To the contrary, the record in this case clearly demonstrates that the remaining bloat in Verizon's rates can be fixed without the need for involving the other Pennsylvania ILECs. And solving that problem will ease the path to a complete solution for those other companies.

Finally, Verizon contends that the Commission's decision is inconsistent with its treatment of the settlement involving Sprint and the Rural Telephone Company Coalition.[18] There are at least two problems with this argument. The first is that, unlike in this case, the Sprint/RTCC settlement was not subject to any meaningful record development. There were no evidentiary hearings concerning such matters as the scope of the access problems in each company's territory. In contrast, and has been noted above, the hearings in this case have presented the Commission with ample evidence of the problems posed by Verizon's inflated access charges, as well as a roadmap for the resolution of those problems. Not taking advantage of that record would not merely be wasteful of the resources that were expended in conducting this proceeding, but could well prove fatal to any chance of securing a completely competitive telecommunications market in Pennsylvania.

The second problem with Verizon's reliance on the Sprint/RTCC settlement is that, if anything, that precedent shows the need for continued Commission involvement in the final resolution of this case. In its Order approving the

---

[18] Verizon Petition for Reconsideration at 5.

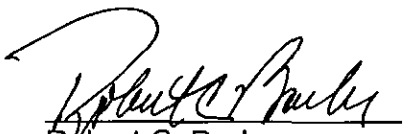
Sprint/RTCC proposal, the Commission noted that the companies that were parties to that proposal represented that they would undertake access reductions "of approximately $25 million within the next eleven months."[19] A year after the Order, however, the actual reductions that have occurred under the settlement appear to have fallen far short of that target – in fact, as AT&T previously notified the Commission, the reductions appear to amount to about half of the $25 million total reduction that was at the heart of the Sprint/RTCC Proposal.[20]

This result amply illustrates the need for continued aggressive action and oversight by the Commission in bringing access reform to a conclusion. It certainly does not justify the interruption – and perhaps irreparable harm – to those efforts inherent in Verizon's request to terminate this proceeding. Accordingly, Verizon's Petition for Reconsideration should be denied.

Respectfully submitted,

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC.

By its Attorneys,



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Of Counsel:
Mark A. Keffer

Dated: August 19, 2004

---

19 Order, Docket Nos. M-00021596 et al., July 15, 2003, at 10.

20 AT&T Letter to Secretary James J. McNulty, Docket Nos. M-00021596, Apr. 7, 2004.

COMMONWEALTH OF PENNSYLVANIA

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August 19, 2004

HAND DELIVERED

DOCUMENT

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P. O. Box 3265
Harrisburg, PA 17105-3265

Re: AT&T Communications of Pennsylvania, Inc. v.
Verizon Pennsylvania, Inc.
Docket No. C-20027195

Dear Secretary McNulty:

I am delivering for filing today the original plus three copies of the Answer of the Office of Small Business Advocate to Verizon Pennsylvania Inc. and Verizon North Inc.'s Petition for Reconsideration in the above captioned matter.

A copy has been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

Sincerely,

William R. Lloyd, Jr.
Small Business Advocate

Enclosures
cc: Hon. Cynthia W. Fordham
Administrative Law Judge

Parties of Record

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62

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
v.	:	Docket No. C-20027195
Verizon North Inc.	:	

**ANSWER OF THE
OFFICE OF SMALL BUSINESS ADVOCATE
TO PETITION OF
VERIZON PENNSYLVANIA INC. AND
VERIZON NORTH INC. FOR RECONSIDERATION**

PROCEDURAL HISTORY

By Order entered June 28, 2004, the Pennsylvania Public Utility Commission ("Commission") reversed the Recommended Decision ("RD") of Administrative Law Judge Cynthia Williams Fordham ("ALJ") and approved the Petition of Verizon Pennsylvania Inc. ("Verizon PA"), Verizon North Inc. ("Verizon North"), the Office of Small Business Advocate ("OSBA"), and the Office of Consumer Advocate ("OCA") for Resolution of Litigation at Docket No. C-20027195. That Petition provided for changes in Traffic Sensitive Access Charges and Carrier Charges to achieve parity between Verizon PA and Verizon North and to reduce the overall access charge revenue for the two companies. The Petition also provided for revenue-neutral increases in the rates of Verizon PA and Verizon North for local exchange service.

By its Order, the Commission also reversed the ALJ's recommendation that the case be closed. Instead of closing the case, the Commission remanded to the ALJ for further development of the record and the issuance of an additional Recommended Decision to address certain policy issues and access charge concerns raised by AT&T

Communications of Pennsylvania, LLC ("AT&T"); MCI WorldCom Network Services, Inc. ("MCI"); and Qwest Communications Corporation ("Qwest") in the Exceptions these interexchange carriers ("IXCs") filed to the ALJ's initial Recommended Decision.

On August 9, 2004, Verizon PA and Verizon North (collectively "Verizon") filed a Petition for Reconsideration of that portion of the Commission's Order which remanded to the ALJ for purposes of additional record development and a second Recommended Decision.

The filing of a Petition for Reconsideration is governed by 52 Pa. Code §5.572. Therefore, the OSBA files the following Answer in accordance with Section 5.572(e) and in response to the numbered averments in Verizon's Petition.

ANSWER

1. Admitted.

2. It is admitted that the agreement between Verizon and the OCA ("Verizon/OCA Joint Proposal") provided for access charge reductions for Verizon PA and Verizon North and left those two companies with the lowest carrier access charges in the state. In that the Verizon/OCA Joint Proposal and the RTCC-Sprint/United Access Order[1] are in writing, the two writings speak for themselves and all characterizations of them are denied.

3. Admitted.

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[1] Access Charge Investigation per Global Order of September 30, 1999, Docket Nos. M-00021596, P-00991648, and P-00991649 (Order entered July 10, 2003) ("RTCC-Sprint/United Access Order").

4. Admitted. By way of further answer, the Commission also directed the ALJ to consider the merits of each party's position and make a recommendation regarding whether the rate structure for intrastate access charges of Verizon PA and Verizon North should continue to mirror the rate structure for the two companies' interstate access charges. RD, at 25.

5. Admitted. By way of further answer, the OSBA addressed these same issues in its testimony, briefs, and exceptions.

6. Admitted in part. By way of further answer, the ALJ also addressed and analyzed the issues (remanded by the Commission) in summarizing the evidence and the parties' positions. In accepting the Verizon/OCA Joint Proposal, the ALJ concluded that because "there is no agreement on Verizon's costs or the Commission's position on allocation of the costs, it is reasonable to accept the proposal." RD, at 58. Based on her review of the record, the ALJ also concluded that the Commission should review the impact of the access charge reductions in the Verizon/OCA Joint Proposal before considering the necessity of further reductions. RD, at 59. Therefore, by necessary implication, her recommendation that this case be closed was based on the conclusion that the evidence presented by the IXCs was not sufficient to justify further reductions.

7. It is admitted that Docket No. C-20027195 is not a "generic policy docket" and was instituted to implement the merger condition that access charges for Verizon PA and Verizon North be brought into parity[2] and to address AT&T's complaint against

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[2] Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement and Plan of Merger, Docket Nos. A-310200f002, A-310222f002, A-310291f003, and A-311350f002 (Opinion and Order entered November 4, 1999) ("Merger Approval Order").

Verizon North's rates. It is denied that the policy issues raised by the IXCs should be considered in a generic proceeding. As Verizon failed to point out, the issues addressed at Docket No. C-20027195 were previously raised in the Commission's generic access charge proceeding[3] and were bifurcated.[4] As Verizon also failed to point out, Verizon PA and Verizon North initially filed their access charge proposal in the generic proceeding at Docket No. M-00021596, but the Commission chose to consolidate that proposal with Docket No. C-20027195 rather than to consider the proposal in the same proceeding with access charge reductions for other incumbent local exchange carriers ("ILECs").[5] Despite Verizon's implication, the costs and policy considerations relevant to access charge reductions are not the same for each ILEC. Consequently, addressing all of the ILECs in the same proceeding would unnecessarily complicate the record and the legal arguments.

8. Admitted.

9. Verizon's Petition for Reconsideration does not contain a numbered paragraph 9.

10. Denied.

a. By way of further answer, the OSBA specifically denies that additional consideration of access charge reductions is best addressed through a new

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[3] Access Charge Investigation per Global Order of September 30, 1999, Docket No. M-00021596.

[4] See the Order entered in the instant proceeding on December 24, 2002, at C-20027195.

[5] See the Order entered on May 5, 2003, at M-00021596.

generic docket and that generic consideration is required by the Global Order[6] or the RTCC-Sprint/United Access Order. As Verizon failed to point out, the issues addressed at Docket No. C-20027195 were previously raised in the Commission's generic access charge proceeding[7] and were bifurcated.[8] As Verizon also failed to point out, Verizon PA and Verizon North initially filed their access charge proposal in the generic proceeding at Docket No. M-00021596, but the Commission chose to consolidate that proposal with Docket No. C-20027195 rather than to consider the proposal in the same proceeding with access charge reductions for other ILECs.[9] Despite Verizon's implication, the costs and policy considerations relevant to access charge reductions are not the same for each ILEC. Consequently, addressing all of the ILECs in the same proceeding would unnecessarily complicate the record and the legal arguments.

b. By way of additional further answer, the OSBA also specifically denies the implication that decisions by the Federal Communications Commission on future access charge reductions must guide the Commission.

---

[6] Joint Petition of Nextlink Pennsylvania, Inc., et al. for Adoption of Partial Settlement Resolving Pending Telecommunications Issues, Docket No. P-00991648, and Joint Petition of Bell Atlantic Pennsylvania, Inc., et al. for Resolution of Global Telecommunications Proceedings, Docket No. P-00991649 (Order entered September 30, 1999), 93 Pa. PUC 172 ("Global Order").

[7] Access Charge Investigation per Global Order of September 30, 1999, Docket No. M-00021596.

[8] See the Order entered in the instant proceeding on December 24, 2002, at C-20027195.

[9] See the Order entered on May 5, 2003, at M-00021596.

WHEREFORE, the OSBA respectfully requests that:

a. The Commission mark the docket at C-20027195 closed; and

b. Deny Verizon's proposal to open a generic proceeding on access charges.

Respectfully submitted,

William R. Lloyd, Jr.
Small Business Advocate

Office of Small Business Advocate
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(717) 783-2831 (fax)

Dated: August 19, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	
	:	
v.	:	Docket No. C-20027195
	:	
Verizon North Inc.	:	

CERTIFICATE OF SERVICE

I certify that I am serving a copy of the Answer of the Office of Small Business Advocate to the Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Reconsideration by e-mail and first class mail (unless otherwise indicated) upon the persons addressed below:

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William R. Lloyd, Jr.
Small Business Advocate

Date: August 19, 2004

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August 19, 2004

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PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
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Re: AT&T Communications of Pennsylvania, Inc.
v. Verizon North Inc.,
Docket No. C-20027195

Dear Secretary McNulty:

Enclosed please find for filing an original and three (3) copies of the Office of Consumer Advocate's Answer to Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Reconsideration in the above-captioned proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely,

Philip F. McClelland
Senior Assistant Consumer Advocate

Enclosures
cc: All parties of record
Hon. Cynthia Fordham, ALJ
*68614

63

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ORIGINAL

AT&T COMMUNICATIONS OF PENNSYLVANIA, LLC,	:	
v.	:	Docket No. C-20027195
VERIZON NORTH INC.	:	

OFFICE OF CONSUMER ADVOCATE'S ANSWER
TO PETITION OF VERIZON PENNSYLVANIA INC.
AND VERIZON NORTH INC. FOR RECONSIDERATION

Philip F. McClelland
Senior Assistant Consumer Advocate

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street, Forum Place, 5th Floor
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: August 19, 2004

I. INTRODUCTION

On August 9, 2004, Verizon Pennsylvania Inc. and Verizon North Inc. (collectively Verizon) filed its Petition for Reconsideration from the Public Utility Commission (PUC or Commission) Order in this proceeding of August 9, 2004 (Order). The Office of Consumer Advocate (OCA) files this Answer, supports various aspects of Verizon's Petition, and states as follows:

Verizon requests reconsideration and makes essentially four points:

1. Many of the issues suggested for further development have already been resolved in this proceeding.

2. Further access issues should be developed in a new proceeding.

3. Closing the present docket and proceeding in a new docket would avoid various procedural issues.

4. Access reform should be addressed on a generic basis in such a new proceeding.

The OCA agrees that, if the Commission desires to proceed further to develop access issues, it would be more appropriate to do so in a new docket.

Verizon correctly explains that this proceeding was initiated in order to address the Verizon merger conditions, (*i.e.* that the access rates of the two Verizon companies were to achieve "parity,") and the AT&T of Pennsylvania, LLC (AT&T) complaint that the Verizon North access rates should be reduced to the level of the Verizon Pennsylvania access rates.[1] The parity requirements of the merger proceeding have been met through the adoption of the access rates proposed through the Petition for Resolution of Litigation (Petition for Resolution) as submitted by Verizon, OCA and the Office of Small Business Advocate (OSBA) on February 26, 2004, and the Verizon North rates have been drastically reduced.

[1] Pet. at ¶ 1.

The Order, however, states that further litigation is required in this proceeding in order to develop "'next steps'" concerning access reform.[2] The Commission states that the ALJ's approval of the Petition for Resolution did not resolve the "possible elimination of the Carrier Charge and removal of all implicit subsidies from access charges."[3] The PUC ordered further consideration in this docket as to "'next steps'" for access reform, such as, whether and when access rates should be reduced to "cost" and consideration of the elimination of the carrier charge.[4] At the same time the Commission ruled that the implementation of the access rates proposed in the Petition for Resolution are "just, fair, reasonable and in the public interest" and should be implemented.[5]

II. ANSWER

A. Further Consideration of Access Rates Should Occur in a New Docket

As noted above, the PUC has made a determination that the access rates produced by the Petition for Resolution, and approved by the PUC, are "just and reasonable." However, the PUC has also stated that the ALJ failed to determine "'next steps'" and has ordered an additional "recommended decision" on outstanding issues.[6]

OCA agrees with Verizon that, having found the rates created by the Petition for Resolution to be just and reasonable in this case, it is inappropriate to continue litigating many of the same issues in the same docket. Once rates are established in a rate proceeding, the rates should be put into effect and the proceeding closed. This is consistent with the Public Utility Code that states:

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[2] *Id.* at 16.
[3] *Id.*
[4] *Id.* at 16-20.
[5] *Id.* at 33.
[6] *Id.* at 16.

> "Whenever the commission . . . upon its own motion or upon complaint, finds that the existing rates of any public utility for any service are unjust [or] unreasonable . . . the commission shall determine the just and reasonable rates . . . to be thereafter observed and in force, and shall fix the same by order . . . and such rates shall constitute the legal rates of the public utility until changed as provided in this part."

66 Pa.C.S. § 1309(a).

The better course of action is to apply the ordered access rates as "just and reasonable," put such rates into effect, and close the present proceeding. OCA submits that it is rare for the Commission to order the implementation of rates in a proceeding, following hearings and testimony concerning the applicable ratemaking issues, and then require the continued litigation of the same issues in the same docket. The very purpose of the Joint Resolution endorsed by the ALJ was to establish a set of prospective reduced access rates and increased basic consumer rates in this proceeding.

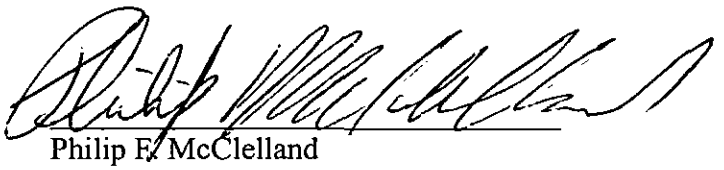
OCA agrees with Verizon that, if the PUC is intent on further consideration of access issues, it may do so in another docketed proceeding. The initiation of such a second proceeding will avoid the procedural and substantive problems of continuing to litigate ratemaking issues given the just and reasonable finding already made in this case.

While the OCA agrees with Verizon that further access reform should be conducted in a *new* proceeding, the OCA does not necessarily agree that Verizon's access rates must be considered in the same proceeding as those of all other Pennsylvania incumbent local exchange carriers. As the Commission has recognized in the past, the situation of Verizon is sufficiently different from Pennsylvania's other more rural ILECs that separate proceedings may still be appropriate.

III. CONCLUSION

The OCA submits that the Commission should reconsider its Order in this proceeding as a result of the Verizon Petition for Reconsideration.

Respectfully submitted,



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Date: August 19, 2004

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CERTIFICATE OF SERVICE

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North Inc.,
Docket No. C-20027195

I hereby certify that I have this day served a true copy of the foregoing document, Office of Consumer Advocate's Answer to Petition of Verizon Pennsylvania Inc. and Verizon North Inc. for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of August, 2004.

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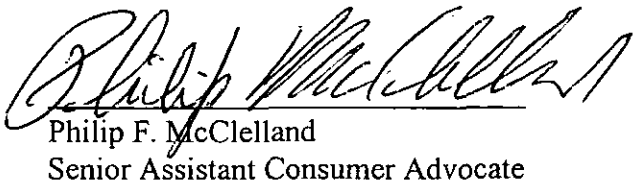

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MCI

August 19, 2004

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Via Overnight Delivery

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc., Docket No. C-20027195

Dear Mr. McNulty:

Please find enclosed an original and nine (9) copies of the Answer of MCI WorldCom Network Services, Inc.'s to Verizon's Petition for Reconsideration in the above referenced case.

Please contact me if you have any questions or concerns with this filing.

Very truly yours,

Michelle Painter

Michelle Painter

Enclosures

cc: Service List (as noted)

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SERVICE LIST

I hereby certify that I have this day caused a true copy of the Answer of MCI to Verizon's Petition for Reconsideration to be served upon the parties of record in Docket No C-20027195 in accordance with the requirements of 52 Pa. Code Sections 1.52 and 1.54 in the manner and upon the parties listed below.

Dated in Washington, DC on August 19, 2004

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AUG 1 9 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AT&T Communications of Pennsylvania, Inc.	:	Docket Number
v.	:	C-20027195
Verizon North, Inc.	:	

ANSWER OF
MCI WORLDCOM NETWORK SERVICES, INC.
TO VERIZON'S PETITION FOR RECONSIDERATION

MCI WorldCom Network Services, Inc. ("MCI") files this Answer to Verizon Pennsylvania, Inc. and Verizon North, Inc.'s (collectively "Verizon") Petition for Reconsideration in the above-captioned case. The Commission should deny Verizon's Petition. First, Verizon's Petition does not meet the standard for reconsideration petitions because it does not raise any new or novel arguments. Second, this Commission has already properly rejected Verizon's position that no further access reductions are necessary in this case. However, MCI does agree with Verizon on one point. Specifically, the record below on the issue of further access reductions has already been fully developed. Therefore, there is no reason to remand this case back to the Administrative Law Judge ("ALJ") for further findings, which will only delay further access reform. Instead, the Commission should use the fully developed record to immediately issue a decision that specifically establishes future steps to bring access charges to cost without the need for further proceedings.

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I. VERIZON'S PETITION DOES NOT MEET THE DUICK STANDARD

The first problem with Verizon's Petition is that it does not meet the *Duick* standard. Under the Commission's standards, a Petition for Reconsideration pursuant to 66 Pa. C.S. § 703(g), "may properly raise matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part."[1] However, in its Petition for Reconsideration, a party may not simply raise the same arguments that the Commission considered prior to issuing its order. The Commission has held:

> Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . . what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked or not addressed by the Commission.[2]

Verizon's Petition does not come close to meeting this standard. In fact, Verizon's own Petition acknowledges that the exact arguments it is requesting be reconsidered were fully developed and addressed below. As Verizon notes in its Petition, "These issues were already fully developed in the record below, fully briefed before the ALJ, and considered in the ALJ's decision to adopt the OCA/Verizon Joint Proposal."[3] Verizon further states that "the parties already fully addressed these issues in the testimony and briefs filed in the underlying proceeding."[4] Given Verizon's express acknowledgement that the issues were already considered below, there is no possible way

[1] *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (Dec. 17,1985).
[2] *Duick*, 56 Pa. PUC at 559.

[3] Verizon Petition at pg. 1.
[4] Verizon Petition at pg. 4.

Verizon can survive the *Duick* standard in demonstrating that its Petition raises new or novel arguments. Verizon simply rehashes the same arguments that were considered and rejected by this Commission. For that reason, the Commission should deny Verizon's Petition for failing to meet the *Duick* standard.

II. THE COMMISSION SHOULD DENY VERIZON'S REQUEST TO CLOSE THE RECORD WITHOUT FURTHER ACCESS REFORM

Verizon's position on reconsideration is that the Commission should not establish further steps to eliminate the alleged subsidies in above-cost access as part of this docket, but should instead leave further access reductions to some future, unknown case with no timetable for conclusion. This issue was fully briefed below and therefore is not a new issue that is subject to reconsideration. Even if it was an issue appropriate for reconsideration, it should be denied.

Verizon claims that closing this case and deferring further access reform to a future, unknown proceeding would be consistent with this Commission's *Global Order*. Nothing could be further from the truth. In fact, this Commission specifically states that it is because of the *Global Order* that it is requiring further access reform be established now. As the Commission noted, "a major aspect of the *Global Order* involving the possible elimination of the Carrier Charge and removal of all implicit subsidies from access charges were not resolved in this proceeding by the ALJ."[5]

In the *Global Order*, the Commission specifically noted, "the sooner that we resolve the reduction and possible elimination of the carrier pool, the better it would be

[5] Opinion and Order at pg. 16.

for the competitive environment in Pennsylvania."[6] In fact, the Commission rejected the ILECs' proposal to wait until 2003 to further reduce access rates and instead ordered such reductions to occur by the end of 2001.[7] Such reductions did not occur in 2001, and in fact, reductions from this case are not even taking place until the end of 2004 or even 2005.[8] Thus, there has already been a substantial delay in implementing access reductions contemplated by this Commission. There is no valid basis to continue the delays in access reform by closing this case, which Verizon acknowledges has a complete record, and deferring further access reform to a non-existent future proceeding.

The reductions that will result from the OCA/OSBA/Verizon Joint Settlement do not come close to reducing access rates enough. There is no dispute that Verizon-PA and Verizon North's access rates are substantially above cost. Even using Verizon's definition of "cost," Verizon's access rates are nearly $130 million above cost, or nearly 65% above cost.[9] The OCA/OSBA/Verizon settlement reduces access rates by less than half of this amount.

As this Commission properly noted, the ALJ ignored other parties' evidence showing that the OCA/OSBA/Verizon proposal did not go far enough to reduce access rates to cost. In the OCA/OSBA/Verizon proposal, Verizon-PA's access rates are barely reduced at all, thereby leaving the rates significantly above cost. Verizon North's switched per-minute access rates are still far above cost, and the carrier charge continues to exist for both companies, which has no cost basis at all.

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[6] *Joint Petition of Nextlink, et al.*, Docket Nos. P-00991648 and P-00991649, Sept. 30, 1999 ("Global Order"), at 59.

[7] Id.

[8] It is not clear when Verizon intends to file tariffs implementing the OCA/OSBA/Verizon Joint Settlement reductions, but it appears that such reductions will not take place until either later this year or early next year.

[9] Transcript at 113-114. *See also* MCI Cr. Exh. 1. MCI Reply Brief at 4.

This Commission specifically listed the Carrier Charge ("CC") as one of the issues that should be addressed in further reductions. One of the major flaws of the OCA/OSBA/Verizon proposal is that it maintains a CC even though most carriers agree that the CC should be eliminated. The ALJ did not even address this important issue in evaluating the reasonableness of the OCA/OSBA/Verizon proposal, which is why the Commission felt that a further decision on this issue was required.

The Commission recognized that "based on our previous goal in the *Global Order* that we may eventually dissolve the Carrier Charge, we believe it is in the best interest of the public for the ALJ to address and recommend a plan that addresses further reductions or even a complete elimination or phase-out of the Carrier Charge in the next phase of the investigation."[10] In making this statement, the Commission considered and rejected the OCA's and OSBA's claims that the Carrier Charge should remain at its current level, or even increased, and rejected Verizon's argument that no further access reductions should be considered as part of this case.

In addition to the CC, the per-minute access rates remain above-cost, are substantially above interstate levels, and must be further reduced. A Hearing Examiner in Virginia recently recommended that access rates be reduced to cost by January 1, 2006. In the Virginia access case, the Hearing Examiner stated that "the end of this case should result in intrastate access rates based on cost."[11] The Hearing Examiner further stated, "[b]ased on the precipitous drop in MOUs, the competitive pressure of wireless and computer technologies, the pro-competitive, anti-subsidy public policy directive of

[10] Opinion and Order at pg. 20.

[11] *Petition of AT&T Communications of Virginia, LLC for reductions in the intrastate carrier access rates of Verizon Virginia, Inc. and Verizon South, Inc.*, Case No. PUC-2003-00091, Report of Alexander F. Skirpan, Jr., Hearing Examiner, June 14, 2004, (hereinafter "Virginia Access Report") pg. 21.

this year's General Assembly, the reduction of intrastate access to cost should be accomplished as soon as possible."[12] This Commission should similarly set a specific timetable for reducing all access rates to cost in Pennsylvania.

III. THE COMMISSION CAN ISSUE A FINAL DECISION ON FURTHER ACCESS REFORM WITHOUT THE NEED TO REMAND THE CASE FOR ADDITIONAL PROCEEDINGS

Verizon also makes the point that the case should not be remanded back to the ALJ for further proceedings because the record below was already fully developed. On this point, MCI agrees with Verizon. The record is more than sufficient for this Commission to make a decision on further access reductions without the need to delay this matter by further proceedings or findings by the ALJ.

As the Commission noted, the ALJ did not make any findings with respect to further reductions beyond the OCA/OSBA/Verizon proposal. However, as even Verizon acknowledges, there was more than ample evidence in the record for the Commission to establish future access reductions.

Given that this case is three years overdue, remanding the case for further proceedings, or even worse -- waiting for a future unspecified proceeding -- would be a further delay in doing what the Commission should do based on the current record. The record establishes more than enough evidence for the Commission to clearly delineate the complete reduction of access rates to cost. There is no reason to wait for further proceedings or further recommendations from the ALJ to make a decision. The record contains all information necessary for this Commission to implement either an immediate

[12] Virginia Access Report at pg. 23.

or a phased-down reduction in access rates to their forward looking costs. Specifically, the record discusses all of the current rate elements and their amounts, including the CC. The record contains information on interstate access rates, which could be the next step in reductions – to bring intrastate access rates to interstate levels. The record also makes it clear what cost-based access rates should be.

As far back as September 1999, this Commission recognized the need to remove implicit subsidies and make them explicit. Specifically, in the Global Order, the Commission significantly reduced access charges "in order to maintain fair toll competition."[13] At that time, the Commission also recognized that "there have been various significant regulatory developments in both the federal and state arenas that ***require the elimination of implicit subsidies.***"[14] Because the Commission did not fully reduce access rates to cost in the Global Order, the Commission ordered an investigation by January 2001 to "***presumably eliminate all subsidies*** in the access charge rate structure."[15] That investigation is well overdue, and thus the Commission should avoid any further delays in eliminating any and all alleged subsidies in access charges.

MCI made specific recommendations about further access reductions in its Exceptions in this case. Specifically, MCI stated:

> At a minimum, if the Commission is not willing to reduce access rates to cost immediately, then the Commission should either reduce access rates immediately to interstate levels (which would include an elimination of the CC, since there is no CC at the interstate level), or if the Commission adopts the Verizon/OCA proposal to be effective as soon as possible, then the Commission should order further reductions to interstate levels by a date certain (such as by no later than the end of 2004) and reductions to cost by a date certain (such as by no later than the end of 2005).[16]

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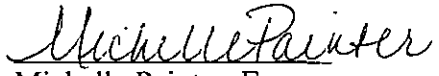
[13] Global Order at pg. 18.
[14] Id. at pg. 26 (emphasis added).
[15] Id. at pg. 59 (emphasis added).
[16] MCI Exceptions at pg. 9.

MCI recommends that the Commission issue a decision on further access reductions as part of this docket, but that the Commission issue a decision without the need for further proceedings at the ALJ level. If the Commission is going to require further proceedings at the ALJ level, the Commission should require the case to be completed, with a final Commission decision, within a short time frame so that further access reductions are not substantially delayed.

WHEREFORE, for the reasons stated herein, MCI WorldCom Network Services, Inc. respectfully requests that the Commission deny Verizon's Petition for Reconsideration. Further access reductions that bring access rates to cost and that eliminate the Carrier Charge should be established as part of this docket. However, there is no need for the case to be remanded back to the ALJ as the record is fully developed and the Commission should issue a decision as soon as possible that establishes a set schedule for bringing access rates to cost.

Respectfully submitted,



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Dated: August 19, 2004

ORIGINAL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger	:	Docket No. C-20027195
AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.	:	

QWEST COMMUNICATIONS CORPORATION'S ANSWER IN OPPOSITION TO VERIZON PETITION FOR RECONSIDERATION

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Counsel for Qwest Communications Corporation

Dated: August 19, 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger	:	Docket No. C-20027195
AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.	:	

QWEST COMMUNICATIONS CORPORATION'S ANSWER IN OPPOSITION TO VERIZON PETITION FOR RECONSIDERATION

I. INTRODUCTION

Qwest Communications Corporation ("Qwest") submits this Opposition to the Petition for Reconsideration of the Order by the Pennsylvania Public Utility Commission ("Commission"), which Verizon Pennsylvania Inc. ("Verizon-PA") and Verizon North, Inc. ("Verizon-North")(collectively "Verizon") filed in this proceeding. In its Order, the Commission properly charted a course where access charge reform would finally be realized in Pennsylvania. Qwest opposes the Verizon Petition for Reconsideration because of its veiled attempt to derail, or at least to continue to delay, the progress ordered by the Commission.

II. COMMISSION RECONSIDERATION STANDARD

Section 5.572(a) of the Commission's regulations, 52 Pa. Code § 5.572(a), provides that a party may seek reconsideration of a prior Commission order:

> (a) Petitions for rehearing, reargument, reconsideration, clarification, rescission, amendment, supersedeas or the like shall be in writing and shall specify, in numbered paragraphs, the findings or orders involved, and the points relied upon by petitioner, with appropriate record references and specific requests for the findings or orders desired.

Petitions for reconsideration are also governed by the provisions of Sections 703 (f) and (g) of the Public Utility Code, 66 Pa.C.S. § 703(f) and (g), which state respectively:

> (f) Rehearing. -- After an order has been made by the commission, any party to the proceedings may, within 15 days after the service of the order, apply for a rehearing in respect of any matters determined in such proceedings and specified in the application for rehearing, and the commission may grant and hold such rehearing on such matters. No application for a rehearing shall in anywise operate as a supersedeas, or in any manner stay or postpone the enforcement of any existing order, except as the commission may, by order, direct. If the application be granted, the commission may affirm, rescind, or modify its original order.
>
> (g) Rescission and amendment of orders. -- The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders.

In determining whether to grant or deny a petition for reconsideration, the Commission applies the standard articulated in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982):

> A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

> Parties ... cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ... what we expect to see raised in petitions for reconsideration are new and novel arguments, not previously heard or considerations which appear to have been overlooked by the Commission.

Duick, 53 Pa. P.U.C. at 559. The essence of the *Duick* standard is that reconsideration will not be granted absent newly discovered evidence, an error of law, or a change in circumstances. *See id.*

The Commission was well aware at the time it issued its Order that the parties disagreed on the issue of whether all issues that needed to be resolved had been addressed by the Administrative Law Judge ("ALJ"). The Commission has already rejected Verizon's position by remanding the proceeding to the ALJ. Therefore, Verizon raises no new issues or arguments in its Petition that were not addressed by the Commission in its Order. Verizon was required by Commission regulation, 52 Pa. Code § 5.592, to submit a compliance filing implementing the Commission's decision by August 17, 2004. Because the issues to be addressed by the compliance filing were not at issue in Verizon's petition for reconsideration, Verizon should have made the compliance filing as required by the Commission. Accordingly, Qwest urges the Commission to deny the Verizon Petition for Reconsideration on its merits immediately, and expeditiously continue the course set forth in the Order.

III. THE COMMISSION PROPERLY REMANDED UNRESOLVED ISSUES.

Qwest generally agrees with the statement in the Verizon Petition that "there is no need to 'further develop the record' on these issues, since the parties already fully addressed these issues in the testimony and briefs filed in the underlying proceeding."[1] Indeed, the record reflects the fully-litigated arguments of Verizon and OCA, despite their proposed settlement during this proceeding. However, it is this proposal which Verizon erroneously claims gives rise to the need for reconsideration.

First, Verizon justifies its request for reconsideration of remanding the unresolved issues, because "ALJ Fordham did address these issues, either explicitly or implicitly, through the adoption of the OCA/Verizon Joint Proposal, and thus rejected the positions advanced by the IXCs."[2] The numerous examples provided by the parties in Exceptions clearly demonstrate that vast portions of the record were either misconstrued, or completely unanswered in the Recommended Decision. The Commission in its Order acknowledges this error by requiring the unresolved issues in the record be remanded for proper consideration. Verizon's argument that all issues have been resolved by the ALJ has already been addressed by the Commission and rejected. Therefore this argument does not meet the *Duich* standard. Second, in its Petition, Verizon also mistakenly asserts that its settlement proposal with OCA is sufficient to conclude this proceeding, because it "was based on a framework virtually identical" to that which the Commission approved in the *Sprint/RTCC Settlement Order*.[3] However, the aspect of the *Sprint/RTCC Settlement Order* most glaringly absent from the Verizon/OCA proposal is its steps "toward making the charges closer to cost and closer to the interstate access charges will help to

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1 Verizon Petition at 4.

2 Verizon Petition at 4.

3 Verizon Petition at 3.

avoid arbitrage and will help competition enter the ILECs territories".[4] Indeed, the **Begin Proprietary *** End Proprietary** reduction in access charges contemplated in the OCA/OSBA/Verizon proposal simply falls short in terms of adequate movement toward interstate access charges. In fact, it is this inadequacy of the proposal, as also demonstrated in the Exceptions filed that seems to spur the Commission to order the further consideration of appropriate reductions be undertaken on remand.

Verizon's marked disregard for the modifications to the Recommended Decision by the Commission in its Order prompts Qwest to adamantly oppose the unnecessary delay associated with granting Verizon's Petition to initiate an entirely new proceeding, which will only expose Pennsylvania consumers to a more significant rate increase at a subsequent time. As Qwest explained in its Exceptions to the ALJ Recommended Decision, "[w]hat the record demonstrates, but the Recommended Decision fail[ed] to recognize, is that Pennsylvania consumers will never truly enjoy vigorous local or long distance competition until the implicit subsidies in Verizon's intrastate access charges are made explicit through reducing the charges to parity with interstate rates." Deferring consideration of the appropriate reduction of Verizon's intrastate switched access charges to a future proceeding needlessly postpones the substantial benefits of such reductions to Pennsylvania consumers.

An appropriate reduction calls for total access charge reductions of **Begin Proprietary ***End Proprietary** until parity with interstate rates is achieved.[5] Spreading cost responsibility for a reduction in intrastate access charges to interstate levels—only to local customers not purchasing packages—would therefore result in no more than a total of **Begin Proprietary** ***

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[4] *Sprint/RTCC Settlement Order* at 11.

[5] Qwest Main Brief at 5 *citing* Qwest St. No. 1.0, p. 6-7; AT&T St. No. 1.0, pp. 8, 26, 33; Tr. 380, 384-385.

End Proprietary increase per line on a revenue neutral basis, which is reasonable.[6] If the Commission were to close this docket and further delay the timeline to reduce intrastate access rates appropriately, the gap between federal interstate access rates and PA intrastate access rates will only continue to widen. This will result in a greater local rate impact on Pennsylvania consumers when the Commission does act and deny PA consumers the benefits of lower in-state long distance rates, not to mention the detrimental impact any delay has on competing IXCs.[7]

It is also important to note, however, that because more than a year has passed since the Commission undertook this proceeding, it may be necessary for parties to make minimal filings on remand to update the record to reflect changes, such as the further penetration of the market by wireless and VoIP providers. Nonetheless, updating the record should not be a means for introducing further delay in Verizon's ordered access charge reductions.

II. GRANTING THE VERIZON PETITION WILL ONLY ACHIEVE FURTHER DELAY IN LONG OVERDUE ACCESS CHARGE REDUCTIONS.

Addressing the fully-litigated issues in this proceeding is also not inconsistent with the *Global Order* or the *Merger Order*, as Verizon claims in its Petition.[8] In fact, as Qwest explained in its Brief, the *Merger Order* states that creating parity between the Verizon ILEC companies must be achieved as "*a part of* the Commission's statewide investigation pertaining to access charges" pursuant to the *Global Order*.[9] The *Merger Order* recognizes that "in the *Global Order*, we have provided for an investigation to achieve *permanent solutions* to access charge reform on or about January 2, 2001."[10] All indications provided in the *Merger Order*

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6 Qwest Main Brief at 10 *citing* AT&T Cross Exh. 7.

7 Qwest Main Brief at 10.

8 Verizon Petition at 5.

9 *Merger Order* at 57 (*emphasis added*).

10 *Id.*

demonstrated that the Commission intended to ensure that Verizon's access rates be uniform statewide once the Commission implemented additional reductions to access charges.

Making Verizon's access charges uniform across the state was not to be performed in substitution for reductions in Verizon's access charges. As recognized by the Commission in this proceeding, "[t]he mandated access charge investigation was delayed because of Verizon's Section 271 hearings in January and February of 2001."[11] Though this proceeding has been delayed three years beyond the date established in the *Global Order*, this is the proceeding in which the access charge reform required by the *Global Order* was intended to take place.

If the Commission had intended, as Verizon contends, for this proceeding to produce the narrow result of parity only between the Verizon ILECs, the Commission could have limited the scope of the proceeding to only considering how to establish parity between the existing switched intrastate access rates of Verizon-North and Verizon-PA. In fact, consolidating the AT&T Complaint into this proceeding provides further evidence to the parties that the Commission intended to consider access charge reductions in the context of this proceeding. Relying on these indications from the Commission, the parties have expended significant resources in this proceeding to litigate not only the need to restructure Verizon's intrastate switched access charges, but also the specific costing issues necessary to require the revenue-neutral and competitively-neutral reduction of Verizon's access charges.

Accordingly, the Commission properly recognized that this proceeding encompasses the occasion to finally achieve permanent solutions to access charge reform for Verizon in

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[11] *In Re The Joint Application of Bell Atlantic Corporation and GTE Corporation for Approval of Agreement And Plan of Merger, AT&T Communications of Pennsylvania, Inc. v. Verizon North, Inc.*, Docket No. C-20027195, Order (May 1, 2003)("*Order Initiating Proceeding*") at 3.

Pennsylvania. Indeed, the recommendation of the "next steps" by the Commission, noted in the Verizon Petition,[12] is an explicit rejection of Verizon's repeated contentions in the record that this proceeding does not require such reform. Simply put, without raising new evidence or matters previously overlooked to support reconsideration, the Verizon Petition fails to satisfy the grounds for reconsideration, and requires the Commission to deny the Petition. The current issues regarding Verizon's access charge reductions should be remanded consistent with the commission's July 28' 2004 order. To the extent that the commission decides to further investigate access reform among other carriers, such as CLECs or Independent ILECs, Qwest supports the initiation of an additional docket to address those issues, which were not part of this proceeding. However, the insular question of Verizon's access charge reductions was appropriately placed before the ALJ, and needs a final determination based on the complete record available.

[12] Verizon Petition at 3.

III. CONCLUSION

Accordingly, Qwest urges the Commission to deny the Verizon Petition for Reconsideration on the merits immediately, and proceed expeditiously with the completion of this proceeding on reducing Verizon's access charges in Pennsylvania.

Respectfully submitted,

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Counsel for Qwest Communications Corporation

Dated: August 19, 2004

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August 25, 2004

VIA OVERNIGHT DELIVERY

ORIGINAL

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Harrisburg, PA 17120

Re: AT&T Communications of Pennsylvania, LLC v. Verizon North Inc. and Verizon Pennsylvania Inc.
Docket No. C-20027195

Dear Secretary McNulty:

Per your August 17, 2004 letter requesting a signed verification to support Verizon Pennsylvania Inc.'s and Verizon North Inc.'s Petition for Reconsideration in the above captioned matter, enclosed please find an original and three copies of the executed verification.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

Julie A. Conover

JAC/rdp
Enc.

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AUG 25 2004
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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ORIGINAL

VERIFICATION
DOCKET NO. C-20027195

I, **JANE K. FORTIN**, Director - Regulatory of Verizon Pennsylvania Inc., hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, (relating to unsworn falsifications to authorities).

8-25-04
Date

JANE K. FORTIN
Director - Regulatory

DOCUMENT

COMMONWEALTH OF PENNSYLVANIA

DATE: August 27, 2004

SUBJECT: C-20027195

DOCKETED
SEP 01 2004

TO: Office of Special Assistants

FROM: James J. McNulty, Secretary KB

AT&T Communications of Pennsylvania, LLC
v.
Verizon North and Verizon Pennsylvania Inc.

Attached is a copy of a Petition for Reconsideration, filed by Verizon Pennsylvania Inc and Verizon North Inc. in connection with the above docketed proceeding.

This matter is assigned to your Office for appropriate action.

Attachment

cc: ALJ
OTS

ksb